

THE GOVERNMENT AND  
ADMINISTRATION  
OF GERMANY



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INSTITUTE FOR GOVERNMENT RESEARCH  
STUDIES IN ADMINISTRATION,

# THE GOVERNMENT AND ADMINISTRATION OF GERMANY

BY  
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AND  
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## DIRECTOR'S PREFACE

There are in existence a number of excellent works dealing with the government of the chief countries of Europe. These works have for their prime purpose to describe the political systems of these countries broadly viewed. In no case do they attempt to consider in any detail the internal organization and methods of procedure of these governments as operating concerns. While meeting in a reasonable way the wants of the general student of government, they largely fail to give that information regarding foreign practices which is urgently needed by those interested in the more technical problems of public administration. In studying these problems as they concern the conduct of public affairs in the United States the Institute for Government Research has, from its organization, been handicapped by its lack of knowledge regarding the manner in which foreign governments have handled them. That these governments have much of value to offer in the way of the principles adopted by them in distributing governmental powers, territorially and functionally, in providing for the determination of and in making provision for financial needs, in auditing and otherwise controlling expenditures, in accounting for the receipt and disbursement of public funds, in adjusting relations between the administration and the courts, in providing for the administration of special business enterprises, and in many other respects, there is no doubt.

To furnish such information, the Institute has undertaken the preparation of a series of volumes, of which the present is the first to be completed, having for their purpose to describe and evaluate the administrative systems of the chief countries of Europe. Though the emphasis is placed upon matters of administration, these volumes will necessarily give an account of the governmental systems of the countries considered; since the administrative system of a country can only be understood as viewed in relation to the social and political philosophy back of it, the constitutional structure within which it works, and the ways in which it is affected by political action.

These studies cover not only the central government and its administrative functions, but also all subordinate units; since it is

felt that a view of the system as a whole, and of the interrelationships of its various parts, is necessary to a clear understanding and full appreciation of the operation of any single unit of government. The present study has approached its material topically, and has endeavored to make each chapter as nearly as possible a complete exposition of a particular subject, even though this has necessitated a certain amount of repetition, since quite often the same fact is significant in several different relationships.

The authors owe thanks to many friends for criticism and helpful suggestions. They desire to acknowledge the aid and coöperation of the Congressional Library and of many members of its staff. Their thanks are due to Dr. Bertling and Dr. Grossmann of the Amerika-Institut in Berlin, for valuable assistance in gathering preliminary information for this book. They deeply appreciate the kindness of Dr. Viktor Bruns of the Institut für ausländisches öffentliches Recht und Völkerrecht, and of Dr. Friedrich Schiller, both of whom have sent them helpful ideas and important materials. Particular gratitude is due to Dr. Schüle of the same Institut, who has performed the laborious task of reading the entire manuscript, with the exception of Chapter X, and offering numerous helpful criticisms. Referentin Frau M. Wolff has kindly assisted in the difficult matter of deciding upon English equivalents for certain German titles. The friendly assistance of Dr. Walter Norden, who read Chapter X and made valuable suggestions, is gratefully acknowledged. Other friends on both sides of the Atlantic have supplied stimulating criticism and useful materials. The authors assume full responsibility, however, for both the factual content of the book, and the critical estimates of the various institutions which it examines.

An important feature of the present work, and the same will be true of the volumes to follow, is that its preparation has been based upon original sources, constitutions, statutes, ordinances, administrative orders and decisions, and the like, to which careful reference has been made in the footnotes. Though the work is specially addressed to students of administration, it should, nevertheless, be of value to students of government and politics generally, and in fact all having to do with or interested in the conduct of governmental affairs.

W. F. WILLOUGHBY.

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# THE GOVERNMENT AND ADMINISTRATION OF GERMANY

## CHAPTER I

### HISTORICAL BACKGROUND OF THE GERMAN REPUBLIC

Germany today has a federal form of government ; or, as her own writers express it, she is a federated state (Bundesstaat), rather than a mere union of independent states (Staatenbund), or a completely unified state (Einheitsstaat).<sup>1</sup> Although this federation has been accomplished but recently, and as the immediate effect of an unsuccessful war and a popular revolution, yet it is the logical result of tendencies toward union which have been operating over a very long period.

Under the Holy Roman Empire there was at least an appearance of federation, even though the allegiance paid by the individual states to the Emperor was of the most equivocal sort. When the Empire was destroyed by Napoleon, there existed some three hundred petty "sovereign states," with a great variety of governmental organizations. Napoleon united many of these minute states into larger ones. The Congress of Vienna finally recognized thirty-eight states. Under authorization of the Congress, these organized themselves into a loose confederation (Deutscher Bund), the sole organ of which was a Diet composed of envoys from the governments of the various states. Though the Diet accomplished but little, since unanimity was required on important questions—an impossible condition—yet it was significant as an expression and a symbol of the growing desire for German union. A practical step toward the accomplishment of this desire was the formation of the customs union (Zollverein), which, beginning in Prussia, soon included a

<sup>1</sup> Meissner, Dr. Otto, *Grundriss der Verfassung und Verwaltung des Reichs und Preussens*, p. 5.

large part of Germany in a free-trade league. Meanwhile, many states were replacing their absolute governments by constitutional governments.

The revolution of 1848 resulted in an attempt to form a federated nation, to include German Austria. The proposed constitution provided for a bicameral parliament and a responsible ministry. The nation was to be an empire in form. The King of Prussia, Frederick William IV, refused the imperial crown; reactionary movements set in everywhere; the scheme of the empire collapsed. Many states lost their constitutions, but in 1850 Prussia was granted one by her king. Meanwhile, Austria had recovered her strength and had worked for the restoration of the old confederation, which she finally controlled. She looked upon Prussia as a rival to be crushed.

In 1862 Bismarck's period of power began. By "blood and iron" he secured Schleswig and Holstein in a war with Denmark in which Austria had temporarily allied itself with Prussia. The rupture with Austria led to war with that country in 1866. This war ended in the dissolution of the Germanic Confederation and the establishment of a North German Confederation under Prussian leadership, which omitted only Austria and the four states south of the River Main. Schleswig and Holstein were annexed to Prussia, as were three western states and the city of Frankfurt.

Meanwhile, Prussia had been introducing many social and administrative reforms, the latter of which have formed the foundation of her present administrative system and have served in many respects as models for the whole of Germany. The reforms of Baron von Stein, whose influence led to the abolition of serfdom in 1807 and to the reorganization of local government in the direction of greater autonomy and a broader basis of citizenship, and of Count Hardenberg, who carried social amelioration still further and strengthened and improved central administration, as well as the other reforms which were introduced in the course of the nineteenth century, unrelated and even inconsistent as these were in some particulars, have left lasting marks not only in Prussia, but throughout the Reich as well.

The war with France in 1870 aroused great patriotic fervor throughout the German states, so that those south of the Main entered the Confederation by treaty. In the prevailing enthusiasm the



idea of a German Empire was revived with success; and in 1871, during the siege of Paris, the King of Prussia was crowned as German Emperor at Versailles. Alsace-Lorraine, which was ceded by France at the end of the war, was made an imperial province. During the same year a revision of the constitution of the North German Confederation was adopted as the fundamental law of the Empire.

This constitution, which remained in effect until the Revolution of 1918, and was not formally repealed until the adoption of the present Constitution, provided for a hereditary Emperor, the king of Prussia, whose powers were very great. The Chancellor was appointed by the Emperor and responsible only to him; other ministers were mere secretaries of state. The Federal Council, or Bundesrat, represented the component states of the empire; the members voted under instruction from their governments, which remained sovereign in their own domains. The powers of this council were "not only legislative, but administrative, consultative, judicial, and diplomatic."<sup>2</sup> The powers of the popular assembly, or Reichstag, on the other hand, were very limited. Although it could pass laws, they could be vetoed by the Bundesrat; since any law, to go into effect, required a majority in both houses. Even the power over the purse, which is commonly considered the ultimate weapon of popular houses, was lacking, since the chief sources of revenue were permanently fixed and the military appropriations, by far the most important, were voted for a period of years. The government was in no sense responsible to the Reichstag; the Chancellor might even refuse to reply to interpellations.

Despite this illiberal and autocratic form of government, the democratic principle had made considerable progress in Germany, even before the Revolution. Thus, in 1906 the members of the Reichstag were granted modest salaries; a measure which opened its seats to others than the rich. Various social reforms, especially insurance schemes against accidents, sickness, and old age, although designed by the government to prevent discontent and discourage socialistic agitation, were yet in themselves steps toward economic democracy.

<sup>2</sup> Ogg, F. A., *The governments of Europe*, p. 217 (1913).

Before the opening of the World War, then, Germany had achieved political union and a certain measure of political and social democracy. By the Constitution of 1919 the union was knit more closely and the democratic principle was developed and emphasized.

During the course of the war attempts were made to modify the old régime in order to permit a greater popular participation in government. Late in October, 1918, a constitutional amendment was passed, making the Chancellor responsible to the Bundesrat and the Reichstag and requiring that he have the confidence of the latter body. The Chancellor was also made responsible for the political acts of the Emperor. This and other reforms, however, came too late to prevent the Revolution. On November 9, the Emperor was forced to abdicate. On the same day the Social Democrats proclaimed a German Republic, headed by one of their foremost members, Ebert.

After various endeavors had been made to organize a new government, and the usual rivalries for control had manifested themselves, a National Constitutional Assembly was elected in January, 1919. The Assembly adopted a provisional Constitution on February 10, under which Germany was governed with Ebert as President, until the permanent Constitution was adopted and promulgated in August. Ebert continued in the presidency<sup>3</sup> until his death early in 1925, when the first popular presidential election was held.

The Assembly continued to sit until May, 1920, in order to write the election law and other laws which were needed to enable important constitutional provisions to become effective. The elections for the Reichstag, which were then held, completed the formal transition from the old régime to the new.

The administrative system of Germany, as of all other countries, cannot be understood without a knowledge of its constitutional basis. Such aspects of the present German Constitution as have particular significance from the standpoint of administration will, therefore, be noted briefly in the course of this study.

<sup>3</sup> Article 180 of the Constitution provided that until the first national President should enter upon his duties, the office should be administered by the national President elected under the provisional government.

The first article of the Constitution declares that the German commonwealth (Reich)<sup>4</sup> is a republic, with supreme power derived from the people. This republic is governed on a parliamentary basis, with a popularly elected legislative assembly (the Reichstag), to which the Cabinet, appointed by the popularly elected President, is responsible. As will be seen, the powers of the central government are very great and those of the member states are relatively weak. The long struggle for democracy has, thus, resulted in a popularly controlled government; the struggle for unity, in a close federation with strong central powers.

<sup>4</sup> The word "Reich" will be employed in the course of this book, rather than its literal equivalents, empire, realm, or commonwealth. This usage would seem to be justified by the example of many English and American writers. It is also in harmony with the feeling of the German Constitutional Convention, which wished to retain the name Reich, not because it expressed the nature of the new government, but because of its historical associations. During the debates several other names were suggested, as, "The United States of Germany," "The German Republic," etc. Arguing for the old name "Reich", Dr. Preuss, who prepared the original draft of the Constitution, said: "But, gentlemen, the word, the thought, the principle of the Reich has for our German people such a deep rooted emotional value, that I think we could not defend the giving up of the name. To the name 'Reich' there is attached the tradition of a hundred years, there is attached the whole yearning of a divided people for a national unity, and we should be doing the greatest injury to these deep rooted feelings, without grounds and without reason, if we should give up this word which represents a unity obtained with difficulty only after long disappointments."—*Verhandlungen der Verfassungsgebenden deutschen Nationalversammlung*, Band 334, p. 285.

## CHAPTER II

### THE REICH AND ITS CONSTITUENT STATES

The first Article of the Constitution of the German Commonwealth declares that the Reich is a republic, with supreme power derived from the people. The second Article declares that the territory of the Reich consists of the territories of the German states (Länder). Thus the Reich is established as a federal government.

In order to prevent the political and administrative difficulties which might easily arise if some of the states composing the republic were themselves monarchies, or if the suffrage qualifications in certain states were much more stringent than in others, the Constitution provides<sup>1</sup> that every state must have a republican constitution; that the representatives of the people must be elected according to the principle of proportional representation, by the universal, equal, direct, and secret suffrage of all German citizens, and that they shall have the usual privileges and immunities;<sup>2</sup> and that the state cabinet must have the confidence of the representatives of the people. The last named requirement is equivalent to demanding that every state shall institute a parliamentary system of government, a demand which was perhaps inevitable under the circumstances, but which has given rise to a good deal of dissatisfaction in some quarters.<sup>3</sup> It has been suggested that the smaller states, in particular, should have been left free to establish other forms of government, better adapted to their size and to their needs than the somewhat cumbersome parliamentary system. However, this system is now in effect in all the German states.

The Constitution requires that the principles which govern the election of the popular representatives are also to apply to municipal elections; but by state law a residence qualification of not more than one year in the municipality may be imposed for such elec-

<sup>1</sup> Constitution, Article 17. The Constitution (Reichsverfassung) will be referred to in this book as RV.

<sup>2</sup> Articles 36-39.

<sup>3</sup> See the discussion of the Koch-Weser proposals, later in this chapter.

tions. "On the other hand the states remain free to provide different modes of suffrage in elections in wards, districts and provinces."<sup>4</sup> Since the residence qualification may not be imposed for national elections or for elections to the popular house of the state legislature, any German citizen who happened to be in a state other than the state of his residence, when such elections were being held, could participate in them.<sup>5</sup>

After the loss of territory resulting from the World War and after the completion of various territorial changes and adjustments, the Reich to-day is composed of the following member states<sup>6</sup> (several of which are little more than city-states): Prussia, Bavaria, Saxony, Württemberg, Baden, Thuringia,<sup>7</sup> Hesse, Hamburg, Mecklenburg-Schwerin, Oldenburg, Brunswick, Anhalt, Bremen, Lippe, Lübeck, Mecklenburg-Strelitz, Waldeck, and Schaumburg-Lippe. Waldeck is soon to become a part of Prussia, and, as will appear later in this discussion, other territorial changes are seriously contemplated.

In any federation many administrative problems rest upon the division of powers between the central government and the member states. The distribution of powers in Germany, and the administrative organization which is based upon this distribution, merit especially careful study because they present many novel features, of great interest and value to the student of political science and public administration.

**Territorial Organization.** A question of primary importance in a federated nation is that of authority to make territorial changes. The German Constitution, while safeguarding to a considerable extent the autonomy of the states and the expressed wishes of the people living in any district as to which a change is proposed, nevertheless gives final power in this matter to the Reich.

Article 2 of the Constitution provides that if the population of other territories than those of the present states, by virtue of self-

<sup>4</sup> Brunet, *The new German constitution*, p. 60.

<sup>5</sup> *Ibid.*, p. 61; Anschütz, *Die Verfassung des deutschen Reichs*, p. 57; Poetzsch, *Vom Staatsleben unter der weimarer Verfassung*, in *Jahrbuch des öffentlichen Recht der Gegenwart*, Vol. XIII.

<sup>6</sup> *Handbuch für das deutsche Reich*, 1926, p. 27.

<sup>7</sup> Formed from seven small states by a law of April 30, 1920, *Reichsgesetzblatt* (hereinafter cited as *RGBl.*), I, 841.

determination, shall request incorporation into the Reich, such territories may be brought in by a national law.

Article 18 provides in detail for various territorial changes, in all of which the final action is taken by the national legislature. The principle is set forth here, that the division of the Reich into states shall serve the economic and cultural advancement of the people, with especial consideration of the wishes of the population affected. Thus, in a single sentence the idea of state sovereignty is displaced, and replaced by the idea that territorial divisions shall serve the general welfare. In order to make possible the practical application of this principle, the alteration of state boundaries and the creation of new states within the Reich is left to the national legislature, which may take action in such matter by the process of constitutional amendment. If, however, the states directly affected consent to the proposed changes, an ordinary national law is sufficient.

An ordinary national law may also be sufficient, even without the consent of one of the states affected, if the change is desired by the population concerned and if it is necessitated by a preponderant interest of the Reich.<sup>8</sup> The desire of the population is ascertained by a plebiscite. The national government must order such a plebiscite upon the demand of one-third of the inhabitants qualified as electors for the Reichstag in the territory which is to be separated.<sup>9</sup> A law of 1922<sup>10</sup> supplements this provision by empowering the national Cabinet to order a plebiscite on its own initiative, in order to ascertain the will of the people.

When the consent of the population has been established, the national government must introduce into the Reichstag for enactment, an appropriate bill.

<sup>8</sup> This provision may be considered "a loophole for the possible partitioning of Prussia."—Graham, Malbone W., *New governments of Central Europe*, p. 37.

<sup>9</sup> For the change to be made, three-fifths of the votes cast, and at least a majority of possible votes, must be in the affirmative. Even when only a part of a Prussian administrative district, a Bavarian county, or a corresponding district in other states, is to be cut off, the desire of the entire population of the district is to be ascertained; "in order," says Brunet (p. 56), "to avoid break-ups due to parochial quarrels." If there is no geographical continuity between the territory to be cut off and the district as a whole, a special national law may pronounce as sufficient, the wishes of the people of the territory to be separated.

<sup>10</sup> RGBI. I, 545.

Any controversy over the division of property which arises in connection with the union or separation of territories, is to be decided, upon complaint of either party, by the High Court of State for the German Reich.

Article 78 of the Constitution contains provisions governing cases in which treaties with foreign countries involve territorial changes. Such treaties are entered into by the Reich, with the consent of the state affected. Alterations of boundaries may be made only through a national law, unless the problem is simply one of adjusting the boundaries of uninhabited portions of territory.

From the standpoint of administration, the potentialities of this centralized power over territorial changes are very great indeed. Consolidation of petty states by the national legislature, for the sake of efficiency and economy in administration through a reduction in the number of national and state administrative offices and agents, or the division of unwieldy states into smaller ones in order to simplify administration, are made possible by the terms of the Constitution, at least in principle. Whether in any given case a proposed change might be politically possible, is another question. There has been much agitation of late for such changes as will do away with the "enclaves," or states completely embodied within larger ones, and will bring about a much more logical and practicable territorial arrangement than now exists. As it is generally agreed that these changes are needed for both political and administrative reasons, and as tentative steps have already been taken toward effecting them, many territorial adjustments may be expected in the near future.

Since the adoption of the Constitution several territorial adjustments have been made. In 1920 the state of Thüringia was formed from the seven small states of Saxe-Weimar-Eisenach, Saxe-Meiningen, Reuss (which was composed of two small states that had voluntarily united shortly after the Revolution), Saxe-Altenburg, Saxe-Gotha without the district of Coburg, Schwarzburg-Rudolstadt, and Schwarzburg-Sondershausen. These states signified their desire for union by making a "treaty"; the Reich then formally created the new state.<sup>11</sup> On the same day Coburg was united to Bavaria, a desire for this union having been expressed

<sup>11</sup> RGBl. 1920, I, 841, 842.

by the voters of Coburg and the government of Bavaria.<sup>11</sup> In 1922 the territorial division Pymont of the state of Waldeck-Pymont was united with Prussia.<sup>12</sup> An exchange of scattered bits of territory between Saxony and Thuringia was effected on April 1, 1928.<sup>13</sup> The fact that such changes are taking place establishes in practice the flexibility of state domains and boundaries.

**Distribution of Legislative Powers.** After laying down the general rule that the Reich has authority over national affairs and the states have authority over state affairs,<sup>14</sup> the Constitution proceeds to establish specifically a distribution of legislative powers between nation and state, according to the principle of enumerating the powers of the national government and leaving other matters to the states.<sup>15</sup> This principle is familiar from its use in the Constitution of the United States of America; but as it is applied in the German Constitution, two extremely important innovations appear; namely: (1) The powers given to the national government are much greater, and the powers left to the states correspondingly smaller, than in the United States; (2) Since the national legislature may amend the Constitution without requiring ratification by the states or by the people, it may at any time take over further powers or make important administrative changes that affect the states. This so-called "competence of competence" places the national government in a stronger position relatively to the states than is commonly held by the central government of a republican federation.

The powers enumerated by the Constitution as belonging to the Reich fall into four main groups; exclusive powers, concurrent powers, optional powers, and normative powers.

The Reich has exclusive jurisdiction over foreign and colonial affairs; citizenship; freedom of travel and residence; immigration, emigration, and extradition; national defense; coinage, customs, posts, telegraphs, and telephones.<sup>16</sup>

<sup>11</sup> RGBI. 1922, I, 281.

<sup>12</sup> RGBI. 1928, I, p. 115.

<sup>14</sup> Article 5.

<sup>15</sup> See Anschütz, *Die Verfassung des deutschen Reichs*, p. 35; Arndt, *Reichsverfassung*, p. 44.

<sup>16</sup> Article 6. "The states can no longer change, extend or repeal their previous state legislation; only the national legislation is here competent." —Stier-Somlo, *Reichs-und-Landesstaatsrecht*, Vol. I, p. 385.



The concurrent power of the Reich and the states is exercised in the following matters: <sup>17</sup>

1. Civil law.
2. Criminal law.
3. Judicial procedure, including the execution of justice; as well as official assistance by one public authority to another.
4. Passports and police supervision of aliens.
5. Poor relief and vagrancy.
6. The press, the right of association, and the right of assembly.
7. Problems of population and protection of maternity, infancy, childhood, and adolescence.
8. Public health, veterinary regulations, and protection of plants against disease or injury.
9. The right to work, insurance and protection of workers and other employees, and employment exchanges.
10. The organization of professional associations extending over the Reich.
11. The care of discharged soldiers and their dependents.
12. The law of expropriation.
13. Socialization of natural resources and of economic undertakings, as well as the manufacture, production, distribution, and price-fixing of economic goods destined for the general economy.
14. Commerce, weights and measures, the issue of paper money, banking, and stock and produce exchanges.
15. Commerce in foodstuffs and food luxuries as well as in commodities of daily use.
16. Industry and mining.
17. Insurance.
18. Maritime commerce, and deep sea and coast fisheries.
19. Railways, internal navigation, motor traffic by land, sea, and air, and the construction of roads for general traffic and national defense.
20. Theaters and cinematographs.

The Reich also has jurisdiction over taxation and other sources of income insofar as it claims them in whole or in part for its purposes; though it must consider the financial needs of the states if it claims any source of revenue which formerly belonged to the states. <sup>18</sup> This somewhat drastic provision, which gives to the Reich almost

<sup>17</sup> Article 7.

<sup>18</sup> Article 8.

unlimited power<sup>19</sup> in the very vital matter of public finance, was necessitated by the prospect of paying war reparations and meeting other national obligations, and the uncertainties of the national financial situation when the Constitution was adopted.

Concurrent jurisdiction is exercised according to the following principles:<sup>20</sup> Jurisdiction in matters which are not given exclusively to the Reich is to remain with the states so long and insofar as the Reich does not exercise its jurisdiction. If state and national laws conflict, the latter are to be supreme. If there is any doubt or difference of opinion, as to the existence of a conflict between state and national law, the national Supreme Judicial Court may be called upon for a decision.<sup>21</sup> State laws which deal with the socialization of natural resources and business undertakings, as well as the production, manufacture, distribution, and price-fixing of economic goods for the general economy, may be vetoed by the national Cabinet if such laws affect the general welfare of the nation.<sup>22</sup>

The optional authority of the Reich consists of jurisdiction over the promotion of social welfare and the protection of public order and safety whenever there is a necessity for uniform rules.<sup>23</sup> Since no authority except the national legislature itself can decide what matters are included under the term "social welfare," what measures are appropriate to the protection of public order and safety, or when the necessity exists for taking action to secure these ends, this authorization amounts almost to a "blanket clause," bestowing extremely broad powers upon the Reich. Nearly any measure which the national government might wish to pass could be described as falling within the scope of this article. Since the states administer national laws,<sup>24</sup> sweeping changes in their administrative

<sup>19</sup> For the extent to which this power has been exercised, see the law concerning the distribution of taxes between the nation, states, and communities (*Finanzausgleichsgesetz* of April 27, 1926, *RGBl. I*, p. 203, with amendments, especially law of April 9, 1927, *RGBl. I*, p. 91) also Chapters VII and VIII of this book.

<sup>20</sup> Articles 12 and 13.

<sup>21</sup> See Stier-Somlo, Vol. I, p. 379 ff. See *RGBl. 1922, I*, pp. 587, 673, 675, for such settlements.

<sup>22</sup> This veto acts to prevent a law from going into effect, but does not repeal a law already operative. See Anschütz, notes to Art. 12.

<sup>23</sup> Article 9. See the notes on this Article by Giese and Anschütz.

<sup>24</sup> Article 14.

organization might be effected under the optional authority of the Reich merely by requiring certain things to be accomplished, to perform which would necessitate extensive alterations in the state administrative organizations.

The normative authority of the Reich consists in its power to establish fundamental principles. It may establish such principles in regard to the following matters:<sup>25</sup>

1. The rights and duties of religious associations.
2. Education, including higher education and scientific libraries.
3. The law of officers of all public corporations.
4. The land law, the distribution of land, settlements and home-steads, restrictions on real estate, housing, the distribution of population.
5. Burial.

The Reich may also prescribe by law fundamental principles concerning the permissibility and mode of collection of state taxes, in order to protect important social interests, or in order to prevent:<sup>26</sup>

1. Injury to the revenues or the trade relations of the Reich.
2. Double taxation.
3. Excessive burdens, or burdens which interfere with trade, upon means and agencies of public communication.
4. Tax discriminations against imported goods as compared with domestic products in interstate or local commerce.
5. Export bounties.

This normative power gives to the Reich a very extensive control over the administration of several matters which are "of vital importance from the points of view of culture and of social considerations."<sup>27</sup> The deep significance of this control and the extent to which it has already been exercised, will be discussed in later chapters.

In this division of competence between Reich and state, obviously the lion's share falls to the Reich. There is almost no important matter which the Reich cannot control, either directly or by the use of its normative authority, within the limits set by the Constitution.

<sup>25</sup> Article 10.

<sup>26</sup> Article 11. This power has been extensively used. See RGBI. 1926, I, p. 203 ff., and 1927, I, p. 91 ff.

<sup>27</sup> Brunet, p. 65.

It is true that one national body, the Reichsrat, is composed of members who represent their own states, in distinction from the Reichstag, which represents the citizens of the Reich as a whole. The power of the Reichsrat to check legislation which might seem undesirable from the point of view of the states is, however, rather limited, as the next chapter will show.

When the powers remaining to the states are listed, it appears that the sphere of state legislative activity is practically reduced to the following subjects:<sup>28</sup>

1. Agriculture and like sources of gain, including forestry, but exclusive of the state labor law.
2. The arts (Kunstleben) and crafts (Kunstgewerb).
3. The welfare system and police.
4. Dwelling and settlement systems, with some limitations.
5. The state law of officers, with limitations as to salary.
6. The affairs of local self administration.
7. Legislation concerning church and education, with limitations.
8. Taxation, with very severe limitations as to kinds, amount, methods of assessment, and distribution.

When the legislative competence of the state is measured against that of the Reich, the states might appear to be but little more than national administrative districts with minor legislative power. The history of the relations between the states and the Reich, however, shows that this view is not entirely correct. "Particularism" and the sense of state individuality have been strong factors in shaping these relations.

**Distribution of Administrative Powers.** The administrative competence of the Reich may be divided into two large categories: (1) Affairs which the Reich itself administers directly, and (2) affairs over which the Reich has general supervision, but which the states and localities administer for it.

I. The list of functions administered by the Reich directly through its own agents is not only rather comprehensive but very important. These functions may be classified as: (a) Functions carried out exclusively by the Reich, and (b) functions administered partly by the Reich.

<sup>28</sup> See Hatschek, *Deutsches und preussisches Staatsrecht* I, p. 91; Stier-Somlo, Vol. I, p. 386 ff.; Blachly and Oatman, *The Position of the State in Germany (Part III)*, *Southwestern Political and Social Science Quarterly*, March, 1927.

Among the functions administered exclusively by the Reich are:<sup>29</sup>

1. Foreign affairs.<sup>30</sup>
2. National defense.
3. The colonial system.
4. The tolls and customs system.
5. The taxation system of the Reich.
6. The entire budgetary system of the Reich, including the accounting and reporting system.
7. The post, telegraph, and telephone system.
8. The railway<sup>31</sup> and canal system.
9. Sea markings, such as lighthouses, light ships, etc.
10. All German commercial vessels are under the control of the Reich.

Among the functions which the Reich administers directly but not exclusively should be mentioned:

1. Insurance.
2. Care for poor and sick.
3. Labor administration.
4. Health administration.
5. The censoring of films.
6. A large statistical administration.
7. The regulation of business and commerce.
8. Agricultural and forest administration, particularly on the scientific side.
9. A national criminal police system.
10. Coal and potash administration.
11. Patent administration.

II. The Constitution provides<sup>32</sup> that the laws of the Reich are to be administered by state authorities, unless other arrangements are made by national law. Article 15 gives to the national Cabinet the supervision of the conduct of affairs over which the Reich has legislative power. If any state fails to perform the duties imposed

<sup>29</sup> See Dieckmann, *Verwaltungsrecht*, p. 42.

<sup>30</sup> In affairs regulated by the states, individual states may also make treaties with foreign states, but these treaties require the consent of the Reich (RV, Article 78, par. 2).

<sup>31</sup> Although the railway is administered as an independent economic enterprise, it is under the administrative control of the Reich. The national criminal police system mentioned in the following list (No. 9) is not actually in effect, for reasons which will appear later in this chapter.

<sup>32</sup> Article 14.

upon it by the Constitution or by national laws, the national President may resort to military force to compel performance.<sup>33</sup>

The fundamental principles that national laws are to be administered as a rule by state authorities and that the work of administration is to be supervised by the national Cabinet, are not innovations.<sup>34</sup> By the Imperial Constitution of 1871 a fairly long list of matters is placed "under the supervision of the Empire and subject to imperial legislation."<sup>35</sup> The practice of having laws passed by the central government and administered by the member states under its supervision is therefore facilitated by custom.

Mention should be made in passing of the fact that many important undertakings of a business nature, over which the Reich has control, are not administered by it, nor yet by the states. Holding companies and stock companies in which the Reich owns a majority of the stock have been formed for the development and administration of such enterprises as railways, canals, potash production, and other socialized industries. The Constitution provides for the administration of the national railways as an independent economic undertaking,<sup>36</sup> establishes the power of the Reich to socialize business enterprises, and authorizes nationalization and socialization in fact, with the possibility of independent administration in form.<sup>37</sup> A later chapter will discuss these special types of administration.

It is unnecessary to remark that insofar as the states have legislative powers they also have the right of administering those functions directly, or of delegating the detailed administration to local authorities of various sorts, which is the method generally employed.

**Constitutional Provisions Affecting State Administration.**  
Like most free constitutions, the Constitution of Germany guar-

<sup>33</sup> Article 48.

<sup>34</sup> See Anschütz, notes to Articles 14 and 15.

<sup>35</sup> Article 4.

<sup>36</sup> Article 92.

<sup>37</sup> Article 156. See chapter XVI. Some writers object to the use of the word socialization to cover public ownership, or public participation in business enterprises. See *Handwörterbuch der Staatswissenschaften*, 4 ed., article on "Sozialisierung." But Kühn in de Grais-Peters, 23d ed., p. 538, and Anschütz (note to Art. 156), employ the word in a broad sense, to cover such activities.

antees certain liberties to the individual. Part 2 of the instrument, which is devoted to Fundamental Rights and Duties of Germans, contains the usual guarantees, and some less usual ones, as well as a program of governing principles for the future economic development of Germany. A very interesting feature of this part of the Constitution is, that unlike the Bill of Rights in the Constitution of the United States, which was held by the Supreme Court<sup>38</sup> to control only the national government and not the states, Part 2 of the German Constitution affords general protection as against all governmental units, agents, or authorities, or lays down general restrictions or limitations which bind the states and their subdivisions as well as the Reich.<sup>39</sup>

From the administrative standpoint, the most significant provisions of this part of the Constitution are as follows: Every German has the same rights and duties in each state of the Reich, as the citizens of that state.<sup>40</sup> Citizenship in the states as well as in the Reich is a matter for national legislation.<sup>40</sup> Rights of travel and residence, sojourn and settlement, the right to acquire land and to pursue any gainful occupation may not be limited in any other way than by national law.<sup>41</sup> Those groups of the people who speak a foreign language may not be interfered with in their free development, by legislative or administrative action; especially in connection with the use of their mother tongue in the schools, or in the matters of internal administration and the administration of justice.<sup>42</sup> Municipalities and unions of municipalities have the right of self-government within the limits of the laws.<sup>43</sup> All citizens without distinction are eligible for public office in accordance with legal principles and suitably to their own ability and experience. All discriminations against women in the civil service are abolished.<sup>44</sup> A number of other regulations governing the civil service

<sup>38</sup> *Barron v. Mayor of Baltimore*, 7 Peters 243; *Maxwell v. Dow*, 176 U. S. 581; *Spies v. Illinois*, 123 U. S. 131; *Brown v. New Jersey*, 175 U. S. 172.

<sup>39</sup> On subject of universal application of norms of national law, see Anschütz, RV, remarks on Article 13, and introductory remarks to Part II; Poetzsch, *Handausgabe der RV*, on same subjects; Hatschek, I, p. 17; etc.

<sup>40</sup> Article 110.

<sup>41</sup> Article 111.

<sup>42</sup> Article 113.

<sup>43</sup> Article 127.

<sup>44</sup> Article 128.

in general are contained in this part of the Constitution; the principles of the official status are to be regulated by national law.<sup>45</sup> The state or public corporation which employs a civil officer is made liable for any failure on the part of such officer to perform his duty toward any third person; but the right of redress against the officer is reserved to the employer.<sup>46</sup>

The administrative arrangements affecting the states in respect to guarantees of personal liberty are as follows:

Certain fundamental rights (carefully specified), such as the inviolability of the domicile, the secrecy of communication by post, telegraph, and telephone, the right of free association, and the right of private property, may be temporarily suspended in whole or in part by the national President, if necessary to the restoration of public order and safety when these are materially disturbed or endangered. The national President may take other necessary measures to restore public order and safety; including armed intervention. Such measures when used by the national President must immediately be reported to the Reichstag, and must be revoked at its demand.

If there is danger from delay, a state cabinet may employ the above-mentioned measures provisionally within the boundaries of the state; but must revoke them at the demand of either the national President or the Reichstag.<sup>47</sup>

Scattered throughout the Constitution are various provisions which serve as limitations upon the administrative action of the Reich or the states, or both. Among them may be noted:

The officers directly charged with the administration of national affairs in a state shall as a rule be citizens of said state; and in so far as possible they shall, if they prefer, be employed in the districts where they reside.<sup>48</sup>

The states may make treaties with foreign countries over matters falling within their jurisdiction, such treaties to be subject to the assent of the national government.<sup>49</sup> In order to secure the representation of interests which arise from the special economic rela-

<sup>45</sup> Articles 128-131.

<sup>46</sup> Article 131.

<sup>47</sup> Article 48. See Chapter IV.

<sup>48</sup> Article 16.

<sup>49</sup> Article 78.



tions of individual states to foreign countries, or their geographical proximity, the necessary arrangements and measures are to be fixed by the national government in agreement with the states affected.<sup>49</sup> Organization for national defense is to be regulated by national law, uniformly, yet with regard to the peculiarities of the inhabitants of the various states.<sup>50</sup> Though customs and consumption taxes are to be administered by the national authorities,<sup>51</sup> arrangements are to be made in this connection whereby the states shall be enabled to guard their special interests in the domains of agriculture, commerce, business, and industry.<sup>52</sup>

The Reich may regulate by law the organization of the state tax administrations, insofar as this is requisite to the uniform and impartial administration of the national tax laws; also the accounting with the states and the reimbursement for administrative expenses in connection with the execution of the national tax laws.<sup>53</sup>

All products of nature and industry, as well as works of art, which are subjects of free commerce within the Reich, may be transported in any direction across state and municipal boundaries. Exceptions may be made by national law.<sup>54</sup>

Section VII, comprising Articles 102-108, deals with the administration of justice. It limits the states in several particulars, as by requiring them in case of reorganization of courts or of judicial districts which involves the transfer of officers to other courts, or their removal from office, to allow full pay;<sup>55</sup> and by requiring the establishment of administrative courts in both the Reich and the states, for the protection of the individual against orders and decrees of administrative authorities.<sup>56</sup>

**Control of the Reich over the States.** The superior position of the Reich in respect to the constituent states is due not only to the distribution of authority which has just been discussed, but also

<sup>49</sup> Article 79.

<sup>51</sup> Articles 82, 83.

<sup>52</sup> Article 83. See also the provisions for the protection of the states against the national government in Articles 94 and 97.

<sup>53</sup> Article 84. For the steps taken by the Reich under this authorization, see Chapter VII.

<sup>54</sup> Article 82.

<sup>55</sup> Article 104.

<sup>56</sup> Article 107.

to various efficacious means of control possessed by the Reich. These may be classified as methods of legislative and judicial control, methods of administrative control, and methods of executive control. They will be examined in the order in which they were named.

*Legislative and Judicial Control.* The Constitution provides briefly: "National law overrules state law." In order to make this subordination of state law effective, the following provision is added: "If doubts or differences of opinion exist, as to whether a provision of state law is compatible with the national law, the appropriate national or state authorities may request the decision of a supreme court of the Reich, according to the more detailed provisions of a national law."<sup>87</sup> A more general provision is found elsewhere:<sup>88</sup> "In so far as no other court of the Reich has jurisdiction, the High Court of State for the German Reich decides upon constitutional controversies within a state in which no court exists for disposing of them, as well as upon controversies not of a private legal nature between different states or between the Reich and a state, upon the motion of either party.

"The President of the Reich executes the judgment of the High Court of State."

Judicial control over the administration of national laws by the states is established by another article,<sup>89</sup> as follows: "Upon the demand of the national Cabinet, the state governments are obliged to correct faults that have arisen in connection with the execution of national laws. In case of differences of opinion, the national Cabinet as well as the state Cabinet may seek the decision of the High Court of State, provided that no other court is specified by national law."

Differences of opinion between a state administration and the national Minister of Finance as to whether a given provision of a state tax law is in harmony with the national law are decided by the national Finance Court.

It should be realized clearly that this judicial control over the states is not a curtailment of their rights, since the court is by no

<sup>87</sup> Article 13.

<sup>88</sup> Article 19.

<sup>89</sup> Article 15, par. 3.

means a mere enforcing agency for any claim which the Reich may make. Its function is to protect the constitutional rights of the states as well as of the Reich.

The great German jurist Triepel, in commenting upon the constitutional provisions cited above, points out the significant fact that in Article 13 no provision is made for execution, and remarks that this gives the losing party an opportunity to withdraw gracefully before the other needs to have recourse to Article 19. After discussing at considerable length the articles quoted, he makes the following pertinent comments upon the High Court of State:

The possibility of appeal to the High Court of State gives to the Reich and to the states an equally strong weapon. . . . More than through anything else whatever, an equal balance between central and state powers was established through it. . . . The establishment of the High Court of State . . . is of primary benefit to the states. The protection of the individual states against arbitrary action on the part of the Reich—that is a principal duty of the High Court of State.<sup>60</sup>

Not only the High Court of State, however, passes on questions of constitutionality. Article 19 expressly provides that it shall take jurisdiction only when no other court is competent and only when questions of public law are involved. May other courts decide generally upon the compatibility of state laws with national laws or the national Constitution; and may they do so even when the issue is raised in a suit by a private individual? A decision of the criminal chamber of the national court (Reichsgericht), which was rendered in December, 1921, answers both of these questions in the affirmative. Private individuals claimed that a state law of Württemberg, which had been enforced to their injury, was incompatible with the provisions of the national Constitution. In a long and carefully reasoned opinion, the court made the following statement, the very general and comprehensive language of which is noteworthy:

The judge is authorized and obligated to examine into the norms of every sort set by state law—including those set by the state constitutions and laws amending the constitutions—to establish

<sup>60</sup> Triepel, Heinrich, "Streitigkeiten zwischen Reich und Länder," in *Festgabe der Berliner Juristischen Fakultät für Wilhelm Kahl*, April, 1923, pp. 115, 116.

whether or not they conflict in form or in substance with a national statute, with a legal ordinance of the Reich, or with the customary law of the Reich; and . . . he must refuse to enforce them if they do.<sup>61</sup>

*Administrative Control by the Cabinet.* It was mentioned earlier in this study that unless some other provision is made, the laws of the Reich are to be carried out by the states. The national Cabinet supervises the administration of all national laws, and it may issue general directions for this purpose. It may also send supervising commissioners to the central authorities of the states and, with their consent, to the subordinate authorities. General administrative regulations concerning laws which are administered by the state authorities require the consent of the Reichsrat.<sup>62</sup> Subject to constitutional provisions as to the consent of the Reichsrat, the national Cabinet is given the general authorization to issue ordinances, which formerly belonged to the Bundesrat.<sup>63</sup>

This supervisory power and ordinance power, although bestowed upon the Cabinet as a whole, is naturally exercised under ordinary circumstances by the individual minister to whose department a given subject of administration belongs. In cases before the High Court of State, however, neither individual ministers nor entire cabinets appear as parties; but always the Reich and the state concerned.

As in all political relationships, that between the national Cabinet and the states is adjusted to some extent by other than purely formal methods. A letter from a member of the national Cabinet to a member of a state cabinet is neither direction, regulation, nor ordinance; it is not provided for in the Constitution; yet how efficacious it may be, one may judge in reading the following excerpt from such a communication:

I am sure that I am not mistaken in believing that the assembled ministry of Hesse does not wish to participate in a reactionary development . . . and I may urgently request, both under instructions from the national President and . . . in the interest of na-

<sup>61</sup> Entscheidungen des Reichsgerichts. Strafsachen 56, p. 177 ff.

<sup>62</sup> Articles 15 and 77. German writers do not agree as to whether the "directions" mentioned in the former article are identical with the "administrative regulations" in the latter.

<sup>63</sup> For a full discussion of the power of the Cabinet to supervise state administration of national laws, etc., see Chapter V.

tional unity, that the ordinance be revoked immediately. . . . I hope . . . that the Hessian government, whose understanding and appreciation of the great questions of German unity has constantly been a model, will also in this case allow the immediate question to yield to the larger viewpoint. . . . I should be grateful for a formal telegraphic notification of the . . . decision, and should be especially obliged if this should relieve me of the necessity of requesting from the national President further measures for setting aside the ordinance.<sup>64</sup>

It will be noted that this letter offers an opportunity for an apparently voluntary revocation of the ordinance in question, yet makes it clear that further measures will be taken in case the state fails to avail itself of such opportunity. These further measures, it is intimated, will not be an appeal to the courts, but an exercise of executive power by the national President.

*Executive Control by the President.* The exercise of federal execution by the national President as against a state is provided for in several constitutional articles. It has already been mentioned that the President is required to execute the decisions of the High Court of State.<sup>65</sup> The methods that may be employed in execution are not specified; except that Article 48 provides as follows:

"If a state does not fulfil the duties laid upon it by the national Constitution or the national laws, the national President can compel it to do so with the aid of the armed forces." There is much disagreement among German publicists<sup>66</sup> as to whether the President could do this on his own judgment, that a state was failing in such duties, or whether he must await the decision of the court. The question cannot be answered from experience, because there has been no case of execution on the ground of Article 48, Paragraph 1, alone. Measures taken under this article have been described as being based on the second paragraph,<sup>67</sup> or simply on Article 48.<sup>68</sup> Occasionally the purpose of an ordinance is stated as "the carrying

<sup>64</sup> From a letter sent on October 7, 1922, by the national Minister of the Interior to the Ministry of State of Hesse, quoted by Dr. Fritz Poetzsch in *Jahrbuch des öffentlichen Rechts der Gegenwart*, Vol. XIII, 1925, pp. 37, 38.

<sup>65</sup> Article 19.

<sup>66</sup> Wittmayer, Otto, *Die weimarer Reichsverfassung*, p. 256; Anschütz, p. 106ff.

<sup>67</sup> RGBL. 1922, I, p. 187.

<sup>68</sup> *Ibid*, p. 523.

out of the Constitution and the restoration of public safety and order,"<sup>69</sup> thus leaving the question undetermined as to whether the measures which it institutes could be taken on the first ground alone.

In addition to the power of federal execution, Article 48 bestows upon the President further "dictatorial" powers to be used for the restoration of public safety and order within the Reich, when these are seriously disturbed or endangered. All authorities agree, and practice has developed, that in the exercise of these powers the President is free to use his own judgment, or, more accurately, is at liberty to enforce the decisions of the Cabinet. In several instances the President has exercised this power directly against states; occasionally he has used it against cities and districts.<sup>70</sup>

Despite these numerous controls, the states are by no means mere passive subjects of the Reich. In southern Germany, especially, there is a strong feeling of state individuality, which has made it impossible up to the present time to do away with states and change the Reich into a unified commonwealth with local subdivisions, as is urged by many persons who believe that a strong, efficient, and economical government could best be secured in this way. In 1922 Bavaria passed an ordinance which practically nullified in that state the national Law for the Safety of the Republic. Pressure from the national Cabinet and the President was followed by a series of negotiations which "may be summed up as a formal and legal victory for the Reich and a political and tactical triumph for Bavaria."<sup>71</sup> The national Cabinet was compelled, as the price of formal submission on the part of Bavaria, to promise that the Criminal Police Law,<sup>72</sup> which had been passed at the same time as the Law for the Safety of the Republic, should not be enforced. This, and various other displays of power and of particularistic tendencies on the part of several states, show that strong opposition still exists to extensions of the power of the Reich. On the other hand, as will be seen from the following pages, many persons are agitating for considerable enlargements of national powers and controls.

<sup>69</sup> RGBI. 1920, p. 477.

<sup>70</sup> For a full discussion of this type of control, see Chapter IV.

<sup>71</sup> Mattern, *Bavaria and the Reich*, p. 70.

<sup>72</sup> RGBI. 1922 I. p. 593. A number of states are voluntarily complying with the requirements of the law, as to state criminal police offices.

**The Demand for Readjustment.** It is generally agreed that the relationship between the Reich and the member states is in need of readjustment. So much dissatisfaction has been expressed over this relationship, that in January, 1928, the national Cabinet called a conference of state representatives to meet with it in Berlin for the purpose of discussing the situation in all its details. The official report of this conference, as given to the press,<sup>73</sup> states that "the regulation by the Weimar Constitution of the relationship between Reich and states is unsatisfactory, and requires a fundamental reform. Although an agreement could not be reached on the question whether the reform should strengthen the unifying or the federative powers, or what union of the two powers in a new form is possible, it was nevertheless agreed that a strong national power is necessary."

Several reforms have been advocated. The present national Cabinet<sup>74</sup> has suggested the following measures:

1. The transfer to the Reich of suitable fields of administration of such states as have become financially weak, beyond the present constitutional sphere of authority.
2. To facilitate agreements as to the merging of smaller states into neighboring states, and to do away with enclaves and exclaves, the national Cabinet offers its good offices.<sup>75</sup>

Far more drastic reforms, however, have been urged. Erich Koch-Weser, a former Minister of the Interior, advocates:

1. A setting aside of the claims of sovereignty on the part of the states, which demands a costly and unnecessary establishment of the administrations and parliaments of the states, where essentially only functions of self-administration have to be carried out.
2. A clear delimitation of competence between the Reich and the states, according to the principle that the decision of the most vital questions confronting the German nation should belong to the Reich, and all other functions in the widest extent are to be given to the sphere of the states and communes.

<sup>73</sup> See *Berliner Tageblatt*, January 19, 1928.

<sup>74</sup> February, 1928.

<sup>75</sup> *Berliner Tageblatt*, January 19, 1928. See RGBL 1928, I, p. 141, for transfer of state tax administration of Thuringia to the finance authorities of the Reich. See *ibid.*, p. 51, for transfer to the Reichsfinanzhof of final jurisdiction in certain cases arising in Lippe.

3. An endowment of the national Cabinet with the right to really influence and control the execution of the national laws through the states and communes.
4. A unification (not a nationalization) of the inferior administrative authorities, the introduction of a unified city, county and communal code and a unified administrative jurisdiction, and the strengthening of self-government.
5. A logical territorial division, which would make it possible for the national authorities to establish an efficient but not too powerful decentralized state administration.

This author believes that the parliamentary régime of the states is a fundamental evil which leads to an injurious and wearisome superfluity of parliamentarianism and to an exaggeration of the significance of state politics. The states primarily perform administrative functions. Consequently, the parliamentary system should belong to the Reich alone, where all of the more important political questions are to be settled. He further believes that in the affairs of the Reich, the state authorities should be required to follow the assignments of the national central authorities, just as in the affairs of the states, the self-administering authorities are already subordinate to the assignments of the state central authorities.<sup>76</sup>

Those who advocate reforms of this nature, and many who are not willing to go so far, urge that steps are imperatively needed to decrease the costs of administration and to simplify its machinery, without sacrificing its efficiency.

The school of thought, of which Lohmeyer is a leading exponent, would divide the Reich into a suitable number of states or provinces, giving the latter only the rights of local self-government. The Reich should assign to these divisions their functions, which they would administer quite independently.<sup>77</sup> In order to secure a consistent and clear-cut organization of public administration, the Reich should establish a unified municipal code and a unified county code.

<sup>76</sup> This is an analysis by the *Berliner Vossische-Zeitung* of January 17, 1928, of the proposals made by Erich Koch-Weser, under the title "Einheitsstaat und Selbstverwaltung." See also Höpker-Aschoff, *Deutscher Einheitsstaat*, 1928.

<sup>77</sup> See Dr. Lohmeyer, *Zentralismus oder Selbstverwaltung*. A review of this book by Dominicus is found in the *Deutsche Juristen-Zeitung* of January 15, 1928, p. 125. See same number of D. J. Z. for Seel, *Der Stand der Verwaltungsreform*.



The difficulties of establishing reforms are very great, in part because so many of the enclaves are within Prussia. To eliminate them without taking further steps would merely increase the power of Prussia. The size of Prussia presents several complicated problems. If Germany were to be divided into effective administrative divisions, it would probably be necessary to partition Prussia. This would give it, or, rather, the territories which formerly composed it, so many votes in the national legislature as to control the Reich—a situation to which certain other states would not care to submit. The southern German states have theories of administration, governmental organization, etc., which are quite different from those of Prussia, as well as a regional “particularism” and a sense of state personality, all of which together present formidable difficulties to almost any scheme of reorganization hitherto proposed.<sup>78</sup> Most of the suggested reforms in administration are dependent upon some solution of the question of territorial adjustment. Thus, the governmental organization within the states (or future comparable divisions), the unification of local administration, the whole problem of the national administrative court, and the system of state and local finance, rest largely upon this primary and extremely difficult question.

An interesting discussion of the financial aspects of reform in the relationship between the Reich and the states is found in the report of the budget committee of the Reichstag, presented in December, 1927, from which only a brief quotation is possible here:

On all sides the present situation is considered undesirable, that the income is centralized under the pressure of burdens of tribute, while the policy of expenditures in the states and communes is withdrawn from any control on the part of the Reich. The division comes with the question of solving this antinomy. While some see the method of solution in the decentralization of income and a clear-cut division of functions between Reich and states, others wish a stronger control of the Reich on the side of outlay, and the gradual transformation of the states into one decentralized unified state.<sup>79</sup>

<sup>78</sup> See the *Süddeutsche Monatshefte*, January, 1928, for several interesting articles under the general caption, *Gegen den Einheitsstaat*.

<sup>79</sup> Bericht des 5. Ausschusses (Reichshaushalt) über die finanz-und wirtschaftspolitische Lage, Reichstag. III, 1924-27, Drucks. Nr. 3764, p. II, No. 5, par. 4. See also the letter and memorandum of S. Parker Gilbert, Agent

**Summary and Conclusions.** The political organization of the German commonwealth is established by its Constitution. This instrument also distributes administrative and legislative competence between state and Reich. The national legislature, however, is empowered to amend the Constitution, so that in effect the Reich possesses the competence to establish its own competence. Its position is strengthened by the fact that it has final control over territorial changes, though these must be made with due regard to the wishes of the persons affected by them. It has exclusive, concurrent, optional, or normative power over practically all legislative subjects of great importance; and the broad terms in which its optional and normative powers are bestowed make possible almost any legislation which it might desire to pass.

The administrative powers of the Reich are co-extensive with its legislative powers; though the states are to administer national laws unless other provision is made. The Reich exercises its administrative powers in three ways: Directly; indirectly by means of special agencies; indirectly by means of the states. Its powers of control over special agencies are exercised through the relation of these agencies to the regular administrative authorities, through its rights as a shareholder, through the terms of charters or contracts, and through the courts. Its powers of control over the states are exercised through the right of the Cabinet to supervise state execution of national laws; through the courts; and by means of the right of the national President to compel any state, by force of arms, to perform the duties imposed upon it by the Constitution or by national laws.<sup>90</sup>

The states retain direct administrative powers over matters entirely within their jurisdiction; or matters as to which they have concurrent jurisdiction and on which the Reich has not yet acted. They legislate in detail upon matters as to which the Reich lays down guiding principles, such as education; and they also administer these functions. The states retain control over their subordi-

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General for Reparation Payments, sent on October 20, 1927, to the Finance Minister of the Reich, together with the reply of the latter, November 5, 1927; both of which are contained in Vol. XVII of the Official Documents of the Reparation Commission, London.

<sup>90</sup> Article 48.

nate administrative agencies and authorities, which are not subject to the administrative control of the Reich except by permission of the states.<sup>81</sup>

The most significant aspects of this division of competence may be stated briefly as follows:

1. The national powers of administration are very important, not only because the Reich exercises considerable control over state administration, though this alone would be noteworthy; but also because of the unusual scope of its administrative competence, due to the socialization of, or public participation in, enterprises and industries which are still in private hands in most other nations.
2. The distribution of legislative and administrative authority is such that the administrative system is remarkably centralized; so much so, in fact, that the federal nature of the Reich, although fully recognized in public law, has much less practical significance than in the United States.<sup>82</sup> Even where there is no direct control over administration, the Reich has often a kind of advisory or final or appellate control. (This will appear in the studies of special functions in later chapters.)
3. The extent and importance of national administrative powers, the control over the states, and the resulting centralization, all make for a high degree of consistency and uniformity in the administrative agencies. Duplication and overlapping are thus largely prevented, and each agency, from lowest to highest, occupies a definite place in a carefully shaped and watchfully controlled hierarchy.
4. Finally, the "competence of competence" possessed by the Reich might be used in such a way that the whole administrative machinery, both that of the Reich and that of the states, could be reshaped to meet changing conditions.

<sup>81</sup> Article 15.

<sup>82</sup> See Anschütz, 1926 ed., Notes to Articles 1 and 5 of the Constitution, for the argument that the Reich is a federation of states, despite the strong central powers. See Friedrich, *Political Science Quarterly*, June, 1928, for the remarkable statement that "German jurists are at odds about whether the German Commonwealth is a decentralized, unitary state or still a federal state" (p. 189, note 2). The official report of the Berlin conference of representatives of the states and ministers of the Reich, quoted earlier in this chapter, recognizes the separate identity of the states and certainly invalidates any claim that the Reich is at present a unitary state. It also expresses considerable doubt as to the direction of future developments.

The relationship between state and central government is not satisfactory at present, for several reasons, many of which bear upon the financial situation, and others upon problems of territorial arrangement and governmental areas. No acceptable plan of readjustment has been worked out, but much thought is being given to this problem. Upon its solution depend many important reforms in state administration.

### CHAPTER III

#### THE REICHSTAG AND THE REICHSRAT AS ORGANS OF ADMINISTRATION AND CONTROL

Under any parliamentary system, the legislative authority exercises a considerable degree of direct control over the administration. The extent and the efficiency of such control vary according to several factors, such as the organization and internal relationships of the legislature, the extent of the legislative powers, the method by which the administration is selected, the authority by which the administrative functions are organized, the plan of organization, special constitutional provisions, and the means by which the legislature exerts its powers of control. The relation of the legislature to the administration in Germany is especially interesting, because of certain novel features established by the Constitution and also because of the way in which political practice has modified some of the constitutional arrangements.

The legislative authority of the German national government is the Reichstag, or popular assembly.<sup>1</sup> It is assisted in the process of law-making by the Reichsrat, a body composed of representatives of the governments of the various states. When laws are contemplated concerning matters of social and economic importance, the National Economic Council has an advisory voice.

The official executive of the Reich is the President, who is elected by popular vote. Administration is conducted by the Chancellor, whom the President appoints; and the Cabinet, the members of which are suggested by the Chancellor and appointed by the President. The Chancellor and every Minister must have the confidence

<sup>1</sup> "The Reichstag is to-day the legislative authority; not, as formerly, the Bundesrat and the Reichstag. The National Cabinet, the National President, the Reichsrat and . . . the National Economic Council are not legislative bodies, although they coöperate in legislation and therefore should always be designated as 'legislative factors.' In so far as the sovereign people does not legislate directly . . . this is done only by the Reichstag. It gives the so-called sanction, the legislative mandate."—Stier-Somlo, *Reichs- und Landesstaatsrecht*, I, p. 539.

of the Reichstag, and must resign if a formal resolution of lack of confidence is passed. The Reichsrat also assists in administration in ways that will be described later.

According to the common practice in parliamentary governments, the German legislative authority is invested with control over the administrative, and the latter has certain important rights and duties which give it a very strong influence upon legislation. Before these reciprocal relationships can be discussed, a brief description of the legislative process is necessary.

**The Reichstag.** The Reichstag is an assembly of delegates of the people, who are elected for a four-year term by universal suffrage according to the principle of proportional representation.<sup>2</sup> National laws are enacted by this body,<sup>3</sup> which is thus the bearer of the vast legislative powers which the Constitution bestows upon the Reich. However, careful provision is made by the Constitution for participation in the making of laws by many other agencies and interests.

**The Process of Legislation.** Bills are introduced by the members of the Reichstag or by the Cabinet. Before the Cabinet introduces a bill it must ask the consent of the Reichsrat; but if this is not given it may nevertheless introduce the bill, together with a statement of the Reichsrat's dissenting position. On the other hand, if the Reichsrat resolves on a bill, the Cabinet must introduce this bill into the Reichstag, even against its own wishes; in such case it also presents a statement of its attitude. The National Economic Council is to be consulted by the Cabinet before bills of politico-social and politico-economic importance are introduced. The Council may prepare drafts of such bills, which the Cabinet must introduce into the Reichstag. In case it does not agree with them, it must also state its position.<sup>4</sup>

The Reichstag fixes its own order of business. According to the regulations now in effect, all important matters are discussed at three readings. Measures are passed by majority vote, except as the Constitution provides otherwise.<sup>5</sup>

<sup>2</sup> Constitution, Articles 20-23.

<sup>3</sup> Article 68.

<sup>4</sup> Articles 68, 69, 165.

<sup>5</sup> Articles 26, 32; also Geschäftsordnung für den Reichstag, Sections 36-48, RGBl. 1923, II, p. 101.

The Chancellor, the Ministers, and their deputies are privileged to attend the sessions of the Reichstag and of its committees<sup>6</sup>; such visitors have a right to a hearing, regardless of the order of the day. The states may also send authorized agents to these sessions, who shall submit the views of the state governments on the matters under discussion, and who must be heard during the deliberations if they so request. The National Economic Council has the right to choose one of its members who shall appear before the Reichstag on behalf of a bill sponsored by the Council.<sup>6</sup>

When a law has been enacted by the Reichstag it is promulgated by the national President through publication within one month in the official gazette. Unless the law itself makes some other provision, it goes into effect on the fourteenth day following publication.<sup>7</sup>

This general rule is subject to exceptions. Promulgation may be deferred by the national President in order that the act in question may be submitted to a popular referendum. One-third of the members of the Reichstag may secure by request postponement of promulgation (except in the case of urgent measures), for a period of two months. If this is done, a petition signed by one-twentieth of the qualified voters may subject the measure in question to a referendum.<sup>8</sup> The Reichsrat may object to an act passed by the Reichstag, in which case the latter body is bound to reconsider it. If the two houses cannot agree on the act, the national President may within three months submit it to a referendum. If he fails to take this action, the act is null and void, unless the Reichstag can secure a two-thirds majority to overrule the objection of the Reichsrat. The President then has the option of promulgating the bill as passed by the Reichstag or of ordering a referendum. An act of the Reichstag is not annulled by popular referendum unless a majority of the qualified electors vote on the issue.<sup>9</sup>

Legislative action may amend the Constitution, but an act doing so requires a two-thirds majority vote of a quorum including two-thirds of all members of the Reichstag. When the Reichsrat votes

<sup>6</sup> Articles 33, 165.

<sup>7</sup> Articles 70, 71.

<sup>8</sup> Only the national President may order a referendum on the budget, tax laws, and salary regulations. Article 73.

<sup>9</sup> Articles 72-75.

on resolutions for the amendment of the Constitution, a two-thirds majority of all votes cast is required for their passage. If the Reichstag adopts a constitutional amendment over the veto of the Reichsrat, the national President shall not promulgate this law if the Reichsrat within two weeks demands a referendum.<sup>10</sup>

The Constitution may be amended by popular vote on an initiated petition, provided that a majority of all qualified voters cast their votes in favor of the proposal.<sup>11</sup>

After close examination of these provisions, two conclusions present themselves:

1. The Reichstag is not given an arbitrary or absolute power. The President, the Cabinet, the Reichsrat, the National Economic Council, and the people may share in the law-making process in very real and effective fashion, especially in initiating bills or causing postponement and reconsideration.
2. Nevertheless, the Reichstag is invested with the legislative authority. When it passes any act by a two-thirds vote, only the people can overrule it; and even they can do so only if a majority of all qualified voters participate in the election. This condition is so stringent as to be nearly impossible. Since an even more difficult condition is made for popular amendment of the Constitution, it is clear that the intent of that instrument is to leave both the legislative power and the power of constitutional amendment in the hands of the Reichstag, the body which represents the people; subject only to the superior power of the people themselves under very exceptional circumstances.

**Effects upon Administration.** This discussion of the legislative process furnishes a basis for the understanding of several important lines of control over the administration which are held by the Reichstag:

1. The legislative power carries with it the power to make any changes in administrative organization and relationships which may seem necessary in the course of time. Since the Cabinet depends upon the confidence of the Reichstag (and is directly responsible to it) such power is normally delegated to the Cabinet; but if actual statutory provisions are needed, the Reichstag can supply them.

<sup>10</sup> Article 76. On other rights of initiation see Article 73.

<sup>11</sup> Article 76.



2. The absence of the separation of powers (the system which leads in the United States to the incongruity of national administrative departments organized by Congress and directed by Secretaries who have no direct responsibility in respect to Congress) and the very great scope of the legislative power, mean that any step necessary for the establishment of a unified and efficient administration can be taken with little danger that a court will decide it to be "unconstitutional."
3. If in some rare case an act passed by the Reichstag should be declared by the courts to transgress the Constitution,<sup>12</sup> the requisite majority could alter the Constitution. This means that important administrative changes can be brought about very rapidly, without the delay of years which is involved in all attempts to amend the Constitution of the United States.

The Reichstag has already amended the Constitution in order to secure even more control over the administration that it formerly possessed. The second paragraph of Article 35 originally read:

"The Reichstag also establishes a standing committee to safeguard the rights of the representatives of the people as against the national Cabinet for the time outside of the sessions and after the close of an election period, or after the dissolution of the Reichstag, until the convening of the new Reichstag."

To this the following words were appended:<sup>13</sup>

"Or after the dissolution of the Reichstag, until the convening of a new Reichstag."

4. The Reichstag possesses not only a great power over national administration by reason of its legislative authority; it has also a considerable influence upon the administrative systems of states and localities. Under the limitations which have already been mentioned, it may change territorial relationships, distribute and delegate powers and functions, set standards, fix norms, provide for agents of supervision and control, and make new requirements in regard to taxation. All these possible lines of action may involve changes of more or less importance in the administrative arrangements of the states and their subdivisions.

<sup>12</sup> In a decision of the Civil Senate of the Reichsgericht, rendered on November 4, 1925, it was held that the courts are competent to examine into the constitutionality of national statutes; and that it is the right and duty of the judge to declare invalid any ordinary law, or individual provision of such a law, passed in the regular way and not as a constitutional amendment, which may be found to conflict with the national Constitution.

<sup>13</sup> RGBl. 1923, I, p. 1185.

**Functional Relationship of the Reichstag to the Administration.** The functional or working relationship between the legislature and the administration is one of the most interesting and important aspects of any governmental system. It is particularly interesting in Germany, partly because of special features, partly because so much of the constitutional development of the future must depend upon the adjustments of the present.

*Means by which the Reichstag Controls the Cabinet.* In addition to the control over administration which grows out of the legislative powers of the Reichstag, the Constitution establishes another type of control, which consists in the responsibility of the Cabinet to the Reichstag.

The Chancellor is appointed by the national President; persons suggested by the Chancellor are appointed by the President as Ministers.<sup>14</sup> The Reichstag, thus, has no direct control over the selection of the Cabinet. The claim is made, however, that since the two-party system has never prevailed, and every parliamentary majority under the new Constitution has been a temporary alliance of several groups, the parties which have allied themselves have customarily agreed upon a division of Cabinet offices according to party strength and influences, and even upon the men to hold the various portfolios. It is said that the President has at times been compelled to make certain appointments, since no other Ministers would be accepted by the Reichstag. Thus, with no formal change in the Constitution, the Reichstag may actually appoint the Chancellor and the other Cabinet members.<sup>15</sup> Although the President has a constitutional right to dismiss them, this right is very unlikely to be exercised under ordinary circumstances.

Article 54 of the Constitution provides that the Chancellor and the Ministers require the confidence of the Reichstag for the administration of their offices and that any one of them must resign if confidence is withdrawn by formal resolution. This specific requirement makes the control of the Reichstag over the personnel and the functioning of the Cabinet not only political but legal. A Minister who remained in office after a vote of lack of confidence

<sup>14</sup> Article 53.

<sup>15</sup> Glum, Dr. F., *Die staatsrechtliche Stellung der Reichsregierung*, etc., pp. 29 ff. (Berlin, 1925).

would violate the fundamental law of the Reich, and would, thus, render himself liable to impeachment.<sup>16</sup>

A disadvantage to the Cabinet, particularly in its handling of the budget, lies in the fact mentioned above, that no Cabinet represents a party majority with a clear mandate to govern. The numerous parties existing in Germany and the system of proportional representation which seeks to give each one a delegation in the Reichstag corresponding to its numerical strength, have so far made a true party majority impossible and a coalition Cabinet almost inevitable. Such a Cabinet cannot possess the strength of one with a party majority behind it, ready to support it and to be led by it.

It is an open question whether the custom prevalent in Germany, of calling any suitable person to serve in the Cabinet, without reference to his membership in the legislature, is advantageous or otherwise to the Cabinet leadership of the legislature, which, equally with the control of the legislature over the Cabinet, is necessary to efficient parliamentary government. The argument frequently advanced, that this custom makes it possible for very able administrators to enter the Cabinet without the distasteful preliminary of a political campaign and without danger of disqualification in case such a campaign should fail to succeed, is undeniably true. Both Cuno and Luther, for example, were appointed to the Chancellorship when they were not members of the Reichstag. On the other hand, it is very doubtful whether a legislature can ever be led so effectively by a group of administrative experts as by men whose political capacity has placed them at the head of their parties, and who are actually members of the legislature itself. The great respect for learning and ability which exists in Germany, however, may counterbalance the factor of political influence. ✓

The traditional "power over the purse-strings" gives the Reichstag a considerable opportunity to control the administration. The Reichstag can decrease or entirely eliminate items from the budget plan prepared by the Cabinet; and may even increase items, with the consent of the Reichsrat. In this way the plans of the Cabinet may be curtailed or parts of them eliminated, or the Cabinet may

<sup>16</sup> See Oppenheimer, *The Constitution of the German Republic*, p. 97.

be forced to the expenditure of money in ways which it considers unwise.<sup>17</sup> During the debates or committee hearings many questions of administration may be discussed, and the Ministers may be called upon to give information regarding their administrative actions or to explain the same. After the execution of the budget the Reichstag and the Reichsrat must examine the accounts of the Minister of Finance to see if the grants have been disbursed according to law. If so, they discharge the administration from further responsibility. The decision of both bodies is based upon the grounds of the examination undertaken by the Rechnungshof and the observations made by it.<sup>18</sup>

The Chancellor or any Minister may be required to appear before the Reichstag, or a committee thereof,<sup>19</sup> and to reply to questions and interpellations. Interpellations to the national Cabinet are handed to the president of the Reichstag in writing. They must be prepared beforehand and must be countersigned by thirty members. To the interpellation there may be added, and usually are added, some brief remarks relevant to the question involved. Very often these consist of statements of fact regarding administrative affairs over which the Cabinet or a Minister has control, or comments as to the failure of the Cabinet to take action in some political or administrative matter. At times the interpellation seems to be merely a method of playing politics.<sup>20</sup> The president of the Reichstag gives the interpellation to the Cabinet and requests from it a declaration whether and when it will answer. If the Cabinet declares itself willing to answer at a certain sitting, the interpellation

<sup>17</sup> An interesting example of the way in which the party situation influences the workings of government may be mentioned. A high financial officer of the Reich told the writers in private conversation that the Reichstag, rather than the Minister of Finance and the Cabinet, is really the creator of the budget. To the remark that in Great Britain the entire Cabinet would resign if the House of Commons should make any material change in the budget, he replied: "*Bei uns auch, theoretisch!* But the complicated party system in Germany, which causes every Cabinet to face uncertainty most of the time, makes such action less likely and compromise more probable. . . . On the whole, the Cabinet is not so strong in Germany as in England."

<sup>18</sup> Article 86; National Budget Law of December 31, 1922, Sections 107, 108; RGBI. 1923, II, p. 17.

<sup>19</sup> Article 33.

<sup>20</sup> For a list of interpellations during the session of the first Reichstag, see *Verhandlungen des Reichstags, I Wahlperiode 1920, Band 362, Sach- und Sprech-register* (1926), pp. 12, 979, 985.

tion is placed upon the order of the day. Before the Cabinet makes its reply, one of the persons bringing the interpellation may make a speech setting forth the grounds upon which the interpellation was based. Although in certain instances such speeches are largely political propaganda, they often contain pointed criticisms of the Cabinet's policy or administrative methods. After the reply by the member of the Cabinet chosen to make it, the interpellation may be discussed further upon the demand of thirty members. It may be assigned to a committee, or the vote upon it may be postponed to another sitting. If the Cabinet declines to answer the interpellation within two weeks, or to answer it at all, it may be placed upon the order of the day and discussed by the Reichstag.<sup>21</sup>

The interpellation is used quite often. While the Constituent Assembly acted as the legislative authority, thirty-four interpellations were brought, of which twenty-nine were answered and twenty were both answered and discussed. During the sittings of the first Reichstag 127 interpellations were brought, of which the Cabinet replied to sixty-seven. The others were either filed without reply, withdrawn, or placed on the calendar but not disposed of formally.

The interpellation is seldom used to bring about a government crisis, as in France; but it is employed either for political maneuvering, or as a *bona fide* method of control over the Cabinet. A typical example of the way in which the Cabinet may be held responsible through interpellation is the following:<sup>22</sup>

#### INTERPELLATION BY DR. MOST, DR. SCHOLZ AND ASSOCIATES

A great and unified canal policy is in the interests of German economic life.

We therefore ask:

Upon what grounds has the organization of the national canal administration necessary for this purpose not yet been accomplished?

What does the Cabinet propose to do to remedy this serious condition?

It is evident that the interpellation furnishes an effective method of control over the administration, not so much, as a rule, in its

<sup>21</sup> The procedure governing interpellations is found in the Geschäftsordnung für den Reichstag, RGBI. 1923, II, p. 101.

<sup>22</sup> Anlagen zu den Stenographischen Berichten No. 413, in Verhandlungen des Reichstags, III Wahlperiode, 1924.

immediate results as in the general effect upon the Cabinet of the realization that it may be used at any time as a weapon of attack. It becomes the Cabinet's aim to administer in such a way as to avoid furnishing any just grounds for criticism.

Another means of control is the right of members of the Reichstag to demand information from the Cabinet by way of "small questions." These questions, which are handed to the President of the Reichstag in written form and sent by him to the Cabinet, must make a concise request for the information desired. Fifteen members must support each question. The Cabinet may send its reply within fifteen days; but if it fails to do so, the President communicates the questions to the Reichstag and places them upon the calendar. The first hour of one sitting in each week may be set aside for the answering of questions.<sup>23</sup> The "small question" is a valuable supplement to the interpellation, since it adds to the control over large outlines of policy and administration which is the special function of the latter, the possibility of securing specific information as to details.

Members of the Cabinet may not only be required to attend sessions of the Reichstag, but also sessions of its committees.<sup>24</sup> It is altogether probable that the control exercised through the committees in this way is greater than that exercised by requiring the attendance of Ministers upon the sittings of the Reichstag.

In the first place, the committees of the Reichstag correspond in purpose, to a certain extent, with the various ministries.<sup>25</sup> These committees gain a large fund of detailed information regarding particular departments, which they can use to good advantage in their discussions with members of the Cabinet.

<sup>23</sup> Geschäftsordnung, Nos. 60, 61.

<sup>24</sup> Article 33.

<sup>25</sup> The standing committees of the Reichstag are: For protecting the rights of the representatives of the people; foreign affairs; order of business; petitions; budget; taxation; audit; political economy; social questions; population; dwelling systems; education; administration of justice; civil service; commerce.—Geschäftsordnung, No. 26. The ministries (in addition to the Chancellory, which has a special status) are: foreign office; ministry of the interior; ministry of finance; ministry of economics; ministry of labor; ministry of justice; national defense; post; commerce; food and agricultural economics; occupied territory.—Handbuch für das deutsche Reich, 1926.

In the second place, since the meetings are not ordinarily public, it is possible to iron out differences, with a minimum of political by-play, in a serious face to face discussion.

The Cabinet must also report to the Reichstag in writing, as to the manner in which matters determined upon by the Reichstag are being carried out. Such reports are printed and distributed among members of the Reichstag, who may within two weeks make written observations to the effect that the information is incomplete or that the administration has failed to fulfil the requirements of the law in certain specific particulars. These observations are conveyed to the Cabinet for written reply; failure to reply within four weeks may result in the placing of the unfavorable observations upon the order of the day, which involves the risk of a vote of censure.<sup>26</sup>

The Cabinet is bound by specific provisions of various laws, to report to the Reichstag at once any action which it may take under these laws, and to revoke such action if the Reichstag shall so demand. Outstanding examples of this type of control are the requirements of the two great authorization laws of 1923.<sup>27</sup>

The Reichstag exercises further control over the administration through its constitutional power of appointing committees of investigation.<sup>28</sup> As no limitation is placed on the subjects which may be handled by such committees, the presumption is that any matter falling within the legislative jurisdiction of the Reich may be investigated by them. The first draft of the Constitution only permitted investigating committees in cases where the sincerity or the legality of the act of the Cabinet was questioned; but since this clause failed of passage, "with the exception of a case of actual lack of confidence in the Cabinet on the part of the Reichstag, the latter assumes the right without limitation of appointing investigating committees. These committees may, for example, be created to examine economic and other questions of importance."<sup>29</sup> Not only the administration but also the judicial authorities are required

<sup>26</sup> Geschäftsordnung, Nos. 67, 68.

<sup>27</sup> RGBl. 1923, I, pp. 943, 1179. These laws will be discussed later in the chapter.

<sup>28</sup> Article 34. See Kochling, *Das parlamentarische Enqueterrecht im deutschen Reich*, etc. (Pub. in 1926 by Grauthoff of Wattenscheid.)

<sup>29</sup> Brunet, p. 150.

to comply with the requests for information which these committees may make and to submit their records upon demand.

Two special committees have a very great control, potentially at least, over the administration. The first is the standing committee on foreign affairs, which may act outside of the sittings of the Reichstag and after its expiration or dissolution until a new Reichstag convenes.<sup>30</sup> This committee has the function of examining the foreign policy of the Cabinet in order to keep constantly in touch with foreign affairs and to exert a continuous influence.<sup>31</sup> This committee has the same power as investigating committees. It can demand all manner of evidence or it may avail itself of the legal aid of courts or administrative authorities.

A committee of even more importance insofar as administration is concerned is the standing committee "for the protection of the rights of the representatives of the people as against the national Cabinet," usually called the "supervisory" committee.<sup>32</sup> It has the duty of preventing encroachment by the Cabinet upon the functions of the Reichstag, of seeing that administration is carried out according to law, that the resolutions of the Reichstag are respected, and so on.<sup>33</sup> It acts when the Reichstag is not sitting.

<sup>30</sup> Article 35.

<sup>31</sup> Representative Katzenstein in the National Constituent Assembly, *Verhandlungen*, etc., p. 1264 C.

<sup>32</sup> Article 35, as amended; *RGBL*. 1923, I, p. 1185.

<sup>33</sup> *Verhandlungen*, etc., p. 1264 C. The debates in the constitutional convention concerning these committees are very interesting. In regard to the second one, Dr. Heinz, of the German People's Party, argued, that since both the members of the committee and the members of the Cabinet would be selected from the Reichstag, the committee only "supervises itself and its own people," that during the time it is in session, which is only when the Reichstag is not in session, it has more power than the Reichstag, and that through its attitudes and votes it may bring about a vote of lack of confidence, which will be prejudicial to the rights of the Reichstag.

Dr. Schücking, of the German Democrats, attacked the establishment of such a committee as undemocratic, saying: "The system of democracy does not consist in surrounding the executive organs everywhere with controls, to compel them before every decision to obtain consent, and thus to make the energetic conduct of business impossible; much more does democracy demand direct power of decision and cheerfully undertaken responsibility of its organs, under the supposition that they have and hold the confidence of the people. . . . We see in the Cabinet a committee which has the confidence of Parliament, and, therefore, we require no small especial supervisory instance outside of Parliament." Dr. Preuss also contended that such a committee was contrary to the parliamentary form of government: "It is



Finally, the Reichstag is empowered to impeach the national President, the national Chancellor and the national Ministers before the Supreme Judicial Court for any wrongful violation of the Constitution or laws of the commonwealth. The proposal to bring an impeachment must be signed by at least one hundred members of the Reichstag, and requires the approval of the majority prescribed for amendments to the Constitution.<sup>34</sup> According to the law governing this procedure<sup>35</sup> the bench in such cases consists of the President of the Supreme Judicial Court, as chairman, one member of the Prussian Superior Administrative Court, one member of the Bavarian Judicial Court, and one member of the Hanseatic Superior Judicial Court, as well as a German legal advisor and ten colleagues, elected from among the members of the Reichstag and the Reichsrat. The trial, then, takes place before a regular court and one in fact which contains eminent judicial talent. An officer found guilty by this court can only be pardoned with the consent of the Reichstag.

*Means by which the Cabinet Influences the Reichstag.* To look at the other side of the picture, the Cabinet, although controlled in so many ways by the Reichstag, in turn exercises a powerful influence over it. Despite all the weakening tendencies which have been mentioned, the very fact that the Cabinet enjoys the confidence of the Reichstag places it in a position of leadership.

Certain provisions of the Constitution and the national laws are designed to develop and safeguard the influence of the Cabinet. Thus, the Cabinet occupies a strong position in respect to legislation, due to the fact that it may introduce bills into the Reichstag. It also plans and introduces the budget bill, in which the Reichstag may not increase appropriations or insert new items without the consent of the Reichsrat. Moreover, practice has made it quite a common thing for a group in the Reichstag which wishes to secure the passage of a certain measure, to ask the Cabinet to draft and introduce an appropriate bill. This naturally gives the

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not only in general a contradiction to the fundamental principles of parliamentary government, but to the fundamental principles of every ordered administration and every responsible execution of public business."—(*Ibid.*, pp. 1292-96 ff.) For a press report of a meeting of this committee, see *Berliner Vossische-Zeitung*, April 25, 1928.

<sup>34</sup> Article 59.

<sup>35</sup> Gesetz über den Staatsgerichtshof, July, 1921, RGBl. II, p. 905.

Cabinet an opportunity to incorporate its own ideas within certain limits.<sup>36</sup>

Nor is the influence of the Cabinet limited to the introduction of measures. The right of the Chancellor and the Ministers, or persons representing them, to attend all sessions of the Reichstag and its committees, to be heard at any time even outside the order of the day, and to reopen a discussion that has been concluded, assures the Cabinet of every opportunity to present its point of view to the legislature.<sup>37</sup> The Cabinet's privilege of expressing, if it so desires, an unfavorable view of a bill which it introduces on behalf of the Reichsrat or the National Economic Council, guarantees its right to lead in matters of public policy, even where it must concede something to the will of other governmental organs.

The control over actual legislation is further greatly increased by the fact that as a matter of practice much authority is delegated to the Cabinet in respect to detail. This extends to affairs which in the United States could be handled only by the legislative authorities. Ordinances are issued by the Cabinet to carry laws into effect, which may in themselves involve important questions of policy. The results of this delegation to the administration, of actual legislative power under the name of ordinance power, are:

1. The legislature is freed from much detailed work for which it lacks training and special knowledge.
2. The Cabinet or the Minister concerned is able to make a working adjustment between the general demands of the law and the exigencies of administration as understood by the administrator. Very often this will be simply filling in the details of a law which the Cabinet itself has drafted and sponsored.
3. Readjustment of details in the light of experience can be done quickly and easily by ordinance, rather than by the cumbersome method of legislative amendment.
4. Responsibility can be definitely and effectively fastened upon the Cabinet, which is the proper organ to assume it.
5. The direct grant of ordinance power to the Cabinet obviates many occasions of appeal to the courts to decide whether the administration is acting in accordance with law. The actual assumption of legislative power by the courts by way of "interpretation," which is the cause of growing dissatisfaction in the United States, is thus largely avoided.

<sup>36</sup> Many examples may be found in the proceedings of the Reichstag. For instance, see *Verhandlungen des Reichstags, 1924, Anlagen zu den stenographischen Berichten*, Nos. 264-569, particularly Nos. 299, 366, 471.

<sup>37</sup> Articles 68, 85, 33. *Geschäftsordnung, RGBI. 1923, II, p. 110.*

An interesting example of the delegation of vast legislative powers to the administration is found in the two authorization laws of October 13, 1923, and December 8, 1923, respectively.<sup>88</sup> The first provides that the Cabinet may take measures which it considers expedient and necessary concerning financial, economic, and social matters, even aside from the fundamental principles of the Constitution. Certain exceptions are made; and it is required that any ordinances issued under this authorization be reported at once to the Reichstag and the Reichsrat, and revoked upon demand of the former.

The second authorizes the Cabinet to take any measures which it considers expedient and necessary, in view of the needs of the people and the Reich, within the provisions of the Constitution. Before the issue of the ordinances a committee of the Reichsrat and a committee of the Reichstag must be heard in private conference. The ordinances which are issued are to be reported at once to the Reichstag and the Reichsrat, and must be revoked upon the demand of either. If the Reichstag so decides, its committee which is heard under the provisions of this law, must also be given a hearing as to proposed ordinances under the law of October 13, 1923.

Although both of these delegations of power were made under extraordinary circumstances for fixed periods of time, and not permanently, the fact that they were made at all shows how far a legislative body may be willing to trust an administration which it can hold responsible. Under the presidential system, as exemplified by the government of the United States, such a delegation of power by the legislature to the administration is almost inconceivable; and even if it should be made, the courts would certainly declare it invalid, as violating the principle of the separation of powers.

*Relationship Between the Reichstag and the National President.* The relationship between the President of the Reich and the Reichstag is extremely interesting because of certain unique features. Although the German commonwealth is a parliamentary republic, which implies that the popular house of the legislature is superior to all other agencies or organs of government, yet it does not select the national President as does the French National

<sup>88</sup> RGBI. 1923, I, pp. 943, 1179.

Assembly. The German President, who may not be a member of the Reichstag,<sup>39</sup> is elected by direct popular vote. His term of office is seven years, as opposed to the four-year term of members of the Reichstag. He is thus assured of a certain degree of political independence of the Reichstag, which various members of the Constitutional Convention did not hesitate to characterize as "dangerous." However, he does not occupy a position comparable to that of the President of the United States, who is totally independent of Congress in many of his acts, and who controls great administrative departments through a so-called cabinet that is responsible to him alone. On the contrary, every official act of the President of the Reich must bear the counter-signature of the Chancellor or of a Minister, who thereby assumes responsibility for the act.<sup>40</sup> The general position of the President in relation to the Reichstag, which was ably discussed by Dr. Hugo Preuss and others during the debates in the Constitutional Convention, has been stated briefly as follows: "

"Physically the President is stronger than the Reichstag, because he has only one will which cannot be divided by party quarrels; but politically the Reichstag is stronger. The President serves, in a way, as a regulator—another popular organ as against the Reichstag, yet always under it, in the sense that all his acts must be countersigned by a Minister acceptable to it. The President acts as a sort of link between the people and the Reichstag; the Cabinet, as a link between the Reichstag and the President."

Although the Reichstag cannot control the President either through selection or through any requirement of confidence, yet it is by no means powerless in respect to him. The constitutional requirement of ministerial counter-signature means that no act of his escapes ultimate control by the Reichstag. For if any act were contrary to the will of the Reichstag, that body, by a vote of lack of confidence, could bring about the downfall of the Chancellor or the Minister who had assumed responsibility for it; and could refuse its confidence to any successors whom the President might appoint until the objectionable act was revoked. Because the Reichs-

<sup>39</sup> Article 44.

<sup>40</sup> Article 50.

<sup>41</sup> From notes taken by the writers during a private interview with Dr. Preuss, Berlin, May 13, 1925.

tag possesses this power, it has no petty jealousy of the President, so that the formal establishment and abolition of ministerial departments by decree are left in his hands, although the Constitution does not so stipulate.<sup>42</sup> More direct control over acts of the President is given to the Reichstag in certain cases. Thus, although the President has very great powers for the restoration of public order and safety when these are materially disturbed or endangered, and may even suspend fundamental rights and exercise armed intervention to this end, he must immediately report to the Reichstag all measures which he takes by virtue of such authority, and must revoke the same upon the demand of the Reichstag.<sup>43</sup> The President concludes alliances and treaties with foreign powers, but when these concern matters falling within the jurisdiction of the Reich, the consent of the Reichstag is required.<sup>44</sup> —

In case of an irreconcilable conflict between the President and the Reichstag, by a two-thirds majority the latter may decide to propose a vote of the people upon the recall of the President from office. If the people vote to retain him, however, the effect is that of a re-election, while the Reichstag is dissolved.

Like members of the Reichstag, the President is made immune from criminal prosecution during the term of his office, unless the consent of the Reichstag is given to such prosecution.

The Reichstag has the right to bring a vote of impeachment against the President. Such a proposal must be signed by at least one hundred members and approved by the same majority that is required for constitutional amendments. The impeachment trial is held before the Supreme Judicial Court.

On the other hand, the President has considerable power of control over the Reichstag. His very great authority in the matter of promulgating bills, delaying their promulgation, or referring them to the people, has been discussed already.

He may cause the convening of the Reichstag earlier than the regular date fixed by the Constitution.<sup>45</sup> He may also dissolve the

<sup>42</sup> See Constitution, Article 179, par. 1; Uebergangsgesetz, Mar. 4, 1919, Sec. 4 (RGBl. p. 285); Anschütz, note 4 to Art. 53; Richter, L., *Die Organisationsgewalt*.

<sup>43</sup> Article 48.

<sup>44</sup> Article 45.

<sup>45</sup> Article 24.

Reichstag, but only once for the same cause.<sup>46</sup> In other words, if the ensuing election results in the return of a Reichstag which adopts the policies of its predecessor, the President must accept this fact as the verdict of the people.

The important Electoral Commission of the Reichstag, which passes upon disputed elections and questions of eligibility, is appointed in part by the President under conditions set by the national Constitution. Proceedings before this Commission, other than the hearings, are conducted by a National Commissioner appointed by the President.<sup>47</sup>

The President's position is thus seen to be very strong in theory, involving even the possibility of a determined opposition to the Reichstag on any given matter, and an appeal to the people to decide. However, the necessity of having all his acts countersigned by a Minister who is responsible for them to the Reichstag, of reporting to the Reichstag all emergency measures (which must be withdrawn upon its demand), and of securing its approval for treaties, guarantees a working adjustment of policy between President and legislature, with the balance of power in favor of the latter. This is a correct arrangement according to the theory of republican parliamentary government, and an essential feature of unified administration under such a government.

**The Reichsrat.** Article 60 of the national Constitution provides that the Reichsrat is established to represent the German states in national legislation and administration. Whereas the national President, the Reichstag, and the Cabinet are representatives of national unity, the Reichsrat, in its composition at least, is founded upon and expressive of the federal principle. In its corporate character, however, it is not an organ of the states, but of the Reich as a whole. This is shown not only in its name, but in the implication of the constitutional provision that "public power is exercised in national affairs by national organs in accordance with the national Constitu-

<sup>46</sup> Article 25. The President's right to dissolve the Reichstag has been exercised twice, namely, on March 13, 1924, and on October 20, 1924. See RGBL 1924, I, pp. 173, 713.

<sup>47</sup> Article 31.

tion."<sup>48</sup> The Reichsrat is, then, a dualistic institution, a national authority, yet representing the states.<sup>49</sup>

Dr. Oppenheimer rightly holds: "It is in this very dualism that the main value of the institution lies. For in Germany where local sentiment is still powerful and quite able to hold its own in competition with national feeling, an organ is indispensable in which centrifugal and centripetal forces are reduced to equilibrium, in which the national will and national wants can be harmonized with the particular aims and aspirations of the states, and where, if the conflict of interest proves too strong for that, a compromise at least may be arranged acceptable to both."<sup>50</sup>

The Reichsrat is a permanent council, which must be convened by the national Cabinet at any time upon the demand of one-third of its members.<sup>51</sup> The suspension of its sittings for a determined period of time requires the consent of the Cabinet.<sup>52</sup> Ordinary meetings are called by the Cabinet.

The states are represented in the Reichsrat by members of their cabinets. Half of the Prussian votes, however, are at the disposal of the Prussian provincial administrations. Each state may send to the Reichsrat as many representatives as it has votes. One vote is allowed every state, regardless of its size. The larger states have one vote for each seven hundred thousand inhabitants; and a remainder of at least three hundred and fifty thousand is counted as seven hundred thousand.<sup>53</sup> No state is to possess more

<sup>48</sup> Article 5.

<sup>49</sup> Dr. Haussmann said in the debates in the Constitutional Assembly: "The Reichsrat, which can properly be designated in the sense of Art. 5 as an organ of the Reich, is at the same time also an organ of the entirety of the states, since . . . the individual members are representatives and organs of their states. It is a creation of the national Constitution, but has constitutionally a double position."—*Verhandlungen der verfassungsgebenden Deutschen Nationalversammlung*, Vol. 327, p. 1342. See also the study by Held, *Der Reichsrat* (published in 1926 by Gebr. Habel, of Regensburg).

<sup>50</sup> Oppenheimer, Heinrich, p. 110.

<sup>51</sup> Article 64.

<sup>52</sup> Rules of Order of the Reichsrat, No. 2. *Reichszentralblatt*, 1919, p. 1521.

<sup>53</sup> The distribution of votes at present is: Prussia 27, of which 13 belong to the provinces and the city of Berlin; Bavaria, 11; Saxony, 7; Württemberg, 4; Baden, 3; Thuringia, 3; Hesse, 2; Hamburg, 2.

All other states have one vote each, making a total of 68 votes.—*Handbuch für das deutsche Reich*, 1926, p. 27.

than two-fifths of all votes ;<sup>54</sup> and no state shall have more than one vote in any committee of the Reichsrat.<sup>55</sup> Proposals may be made by any member of the Reichsrat or by the national Cabinet.<sup>56</sup>

*Legislative Functions.* As the description of the legislative process has shown, the Reichsrat does not function as an upper legislative chamber. Its duty is to assist in the process of legislation rather than to share in it upon equal terms ; and its particular task is to see that the point of view of the states is represented when national laws are under consideration. However, the requirement of its consent to bills which the Cabinet proposes to introduce into the Reichstag, the provision of a means by which its wishes may be presented to the Reichstag even though the Cabinet does not agree, the right of "suspensive veto" against ordinary laws ; and of demanding a popular referendum upon constitutional amendments, give it a very real influence upon legislation.

This influence is strengthened by the personal qualities of its members. Since the Reichsrat is composed of members of the state ministries, their familiarity with the needs and desires of the states, and their knowledge of the actual operations of state government, enable them to speak with authority and be heard with respect. Moreover, the popular support which they generally possess, as well as the educational qualifications, training, and experience which a ministerial position in any German state implies, give them added prestige.<sup>57</sup>

Another line of influence is found in the relation of the Reichsrat to the Cabinet. Although the Cabinet is in no way responsible to the Reichsrat, the fact that Cabinet members hold the chairmanship of that body and of its committees<sup>58</sup> and have the right to be heard at any time during the deliberations, means not only that the

<sup>54</sup> This provision is designed to prevent Prussia from becoming absolute mistress of the Reichsrat ; since her voting strength based on population alone without this restriction would give her a majority of all votes.

<sup>55</sup> Articles 61-63. For distribution of the Prussian votes, see *Gesetzsammlung*, 1921, p. 379.

<sup>56</sup> Article 66.

<sup>57</sup> At the time of writing, seventy members and deputy members of the Reichsrat possess the degree of Doctor (usually in jurisprudence) ; and most of them hold important positions in the state ministries. See *Handbuch für das deutsche Reich*, 1926, p. 29 ff.

<sup>58</sup> Article 65. As a matter of practice, under ordinary circumstances a permanent ministerial secretary acts as committee chairman.



national Ministers will be in an advantageous position for securing consent to their proposals, but also that they will be unable to escape some modification of their own views, opinions, and plans, in the face of the immediate practical knowledge of state needs and public sentiment possessed by the members of the Reichsrat. The constitutional provision that Ministers must participate in the deliberations of the Reichsrat upon demand, further strengthens the position of that body.

Both constitutional and extra-constitutional factors thus combine to make the Reichsrat a far from negligible participant in legislation.

The Reichsrat has certain limited, but by no means insignificant, functions in respect to the budget: The budget bill, like any other bill presented by the Cabinet, requires the consent of the Reichsrat before it is introduced into the Reichstag.<sup>59</sup> Information as to the alienation of national property and other economic affairs is to be given to the Reichsrat as well as the Reichstag; and the consent of both houses is required to various specified changes in financial plans and contracts.<sup>60</sup> If the Reichstag undertakes to increase items in the budget bill, or insert new items, the consent of the Reichsrat is to be obtained.<sup>61</sup> Even in this case, however, the requirement of consent may be dispensed with as in regard to any other bill.<sup>62</sup> The discharge of the Cabinet in respect to the budget requires a vote of both houses.<sup>63</sup>

*Administrative Powers.* The administrative powers of the Reichsrat are quite extensive, nor are they by any means confined in a narrow sense to the representation of "the German states in federal . . . administration."<sup>64</sup> Some of them are bestowed by the Constitution, and others by various national laws.

Article 67 of the Constitution provides that the Reichsrat shall be kept informed by the national ministries of the conduct of national business, and that upon matters of importance the ministers shall consult the committees of the Reichsrat within whose sphere

<sup>59</sup> Article 69; National Budget Law of December 31, 1922 (Reichshaushaltsordnung, referred to as RHO), Section 22; RGBl. 1923, II, 17.

<sup>60</sup> RHO, Sections 45-50 *et passim*.

<sup>61</sup> Constitution, Article 85.

<sup>62</sup> Articles 85, 74.

<sup>63</sup> Article 86.

<sup>64</sup> Article 60.

the subject matter falls. Documents which are submitted by the Ministers, as well as petitions, memorials, addresses, and the like, are presented to the full assembly. Resolutions regarding drafts of laws and ordinances, decisions of the Reichstag, and proposals made by states through their representatives, are laid before the Reichsrat by the national Minister of the Interior. The important business of the Reichsrat is handled in plenary sessions which are called by the Cabinet (in practice, the Minister of the Interior, through whom the Cabinet usually manages its relations with the Reichsrat).<sup>65</sup>

The standing committees of the Reichsrat are as follows: Foreign affairs, political economy, internal administration, commerce, budget and accounting, taxation and customs, administration of justice, constitution and order of business, national defense, navigation, and execution of the peace treaty.<sup>66</sup> It will be seen that they correspond fairly closely in function with the national ministries; and since they are presided over by representatives of the ministries, a valuable reciprocal relationship is established.

The Reichsrat has no general ordinance power. Only by virtue of special legal authorization can the Reichsrat issue ordinances for the execution of federal laws.<sup>67</sup> However, in two cases the Cabinet is required by the Constitution to secure the assent of the Reichsrat before the issuing of ordinances:

- I. Its assent must be obtained to ordinances concerning federal laws in which the execution is left to state authorities.<sup>68</sup> In this way the coöperation of the states in laying down principles and framing regulations according to which their own officers must carry out the laws is secured in advance, since the members of the Reichsrat are high state officers. Not only is a better working relationship obtained as a consequence, but a great deal of objectionable bureaucratic control is obviated. The rules and regulations also will probably be framed in accordance with the facts of actual administration.

Although, as we have seen, the Constitution provides that national laws are to be carried out by the states unless

<sup>65</sup> Geschäftsordnung, No. 11.

<sup>66</sup> Geschäftsordnung, No. 31.

<sup>67</sup> Articles 77, 179.

<sup>68</sup> Article 77. See also Anschütz, *Die Verfassung des deutschen Reichs*, p. 138 ff.; Poetzsch, *Vom Staatsleben unter der Weimarer Verfassung*, in *Jahrbuch des öffentlichen Rechts der Gegenwart*, Vol. XIII, 1925, pp. 139-40.

other provision is made,<sup>69</sup> at present the Reich administers many functions directly through its own agencies or through special organizations which it controls.<sup>70</sup> The functions of the Reichsrat in assenting to ordinances of the type in question are therefore less extensive than was probably anticipated by the writers of the Constitution.

2. Its assent must be secured to ordinances<sup>71</sup> which regulate railway construction, management, and operation.<sup>72</sup> The co-operation of the Reichsrat is also required by the Cabinet in its work of organizing advisory councils on railways and waterways.<sup>73</sup>

The results of such assent and coöperation would seem to be highly advantageous, first, in removing the chief objection to centralized control by giving a practical recognition to the principle that since the economic and social welfare of the people in the states is so intimately affected by services and rates, they should have a right to be heard on these matters. Undoubtedly the United States Interstate Commerce Commission would greatly benefit from like advice and consultation, and the states and localities would feel better satisfied with federal rate regulation if they had some voice in shaping it. In the second place, there can be no doubt that such coöperation makes for greater administrative efficiency, as bringing to the new national organizations the results of many years of local experience.

Through recent national laws, also, the Reichsrat is given certain powers of decision and assent. For example, in the law governing the distribution of taxes between the Reich and the states and municipalities, the Reichsrat is given the right to say, in case of conflict, whether state or municipal taxes are suitable, whether they injure national income, or whether they are against the interests of national finance.<sup>74</sup> Local beverage tax regulations made by the

<sup>69</sup> Article 14.

<sup>70</sup> This is true of railways, canals, telephones and telegraphs, national property, post, customs and excises, taxes, business which the nation owns or has an interest in, etc.

<sup>71</sup> Article 88 formerly required the consent of the Reichsrat to ordinances concerning regulations, rates, and advisory councils for the postal, telegraph, and telephone services; but these provisions are now repealed.

<sup>72</sup> Article 91.

<sup>73</sup> See Articles 93, 98.

<sup>74</sup> *Finanzausgleichgesetz*, April 27, 1926, Sec. 6, *RGBl.*, I, p. 203.

National Minister of Finance must also have the consent of the Reichsrat.<sup>75</sup>

The Reichsrat acts as a reviewing authority in only one instance, which has been mentioned already. In the year following each fiscal year, the national Minister of Finance submits to the Reichsrat as well as to the Reichstag his accounts covering the disposition of all national revenue, in order that the Cabinet may be discharged as to the previous budget. The Reichsrat reviews the accounts and passes upon the question of discharging the ministry.<sup>76</sup>

One of the most important features of the administrative work of the Reichsrat is its nominating or appointing power in regard to a considerable number of courts, councils, officers, committees, and the like. In this way it secures a certain control over such agencies, and consequently has an indirect share in numerous administrative functions and in the management of several national business enterprises, or enterprises in which the Reich has an interest. This control is, of course, strengthened where the appointees are members of the Reichsrat. At present the Reichsrat exercises either complete or partial appointing power in regard to the following agencies: "<sup>77</sup>

1. Five members of the Supreme Judicial Court for impeachments moved by the Reichstag against the national President, the national Chancellor, and national Ministers, on account of culpable violation of the national Constitution.
2. Two members of the High Court of State, as well as two substitutes, for various cases of conflict between the Reich and the states upon the ground of the national Constitution.
3. Twelve persons particularly entrusted with the economic interests of the respective districts as members of the temporary National Economic Council.
4. Eight non-permanent members of the National Insurance Office, of which six must be chosen from its membership.
5. The non-permanent members of the National Supervisory Office for Private Insurance.
6. The members of the National Health Council.
7. Seven members of the Council for Labor Statistics.
8. The members of the Exchange Committee.

<sup>75</sup> *Ibid.*, Sec. 15.

<sup>76</sup> Article 86; RHO. No. 108.

<sup>77</sup> *Handbuch für das deutsche Reich*, 1926, p. 28.

9. Three representatives of the states in the National Potash Council.
10. Five members of the Advisory Council for the National Electrical business, from its membership.
11. Six members of the National Bank Curatorship.
12. Six members of the National Debt Committee, from among its members.
13. Seven members (and substitutes) of the Central Office for the Redistricting of the Reich.
14. The chairman of the Appellate Chamber in stock exchange honor court affairs, and his substitute.
15. The chairman, his substitute, and the associates of the Appellate Commission for criminal procedure on account of forbidden stock deals.

It nominates the following to the national President for appointment:

16. The president, the senate presidents, and the councillors of the High Court of State, the chief national attorney and the national attorneys.
17. The president of the National Bank Directorate.
18. The president and the members of the united Office for Homesteads.
19. The president and the members of the Disciplinary Court and the Disciplinary Chambers.
20. The President of the National Patent Office.
21. The president and the permanent members of the National Insurance Office.
22. The president and the permanent members of the National Supervisory Office for private Insurance, the judicial officers coöperating with this office, and the members of the highest administrative court, as well as the members of the Insurance Advisory Council.
23. The president and the official members of the Directorate, as well as the other high regular officers of the National Insurance Institute for Employees.
24. Seven members of the administrative council of the German National Post.

**Summary and Conclusions.** Although, as we have seen, the parliamentary system of Germany differs in several respects from that of England, which is generally considered the type or model, yet it displays the essential features of parliamentary government: namely, a Cabinet charged with the work of administration, dependent upon the confidence of a legislative body composed of representatives of the people.

This legislative body, the Reichstag, is the fundamental law-making organ of the German nation. As an agency of control over the administration, it may act in an organizing capacity by way of legislation; but it seldom does so, preferring to leave the Cabinet free to organize its own work. Control is secured by other methods; in particular, by the requirement of confidence, by legislative power over the budget, and by interpellation.

The Cabinet influences the Reichstag through its own position of political leadership, through its right to initiate bills, and through its privilege of being heard at any time during any deliberation. The confidence enjoyed by the Cabinet results in grants of ordinance power which practically amount to the right to legislate on many matters.

The superiority of this relationship over that which prevails in the United States, where the legislative body, deprived of all other control over the heads of administrative departments, organizes each department in detail, can hardly be disputed. The German system leaves the complete responsibility of organizing an efficient administrative machine with those who have detailed knowledge and practical experience in this direction, and who must operate it. The legislature is spared the loss of time involved in any endeavor to organize departments by law, as well as the onus for faulty functioning which must rest upon the shoulders of the organizing authority. The Cabinet can neither avoid nor shift the responsibility for organization and operation, nor can it escape direct and completely enforceable control over the manner in which it exercises this responsibility. Administration is far more unified, and can, therefore, be conducted with much greater efficiency and economy than in governments where separate departments are managed independently, and particularly where they make independent appeals to the legislature for funds.

The Reichstag has no power over the President in so far as appointment and responsibility are concerned, but it controls his acts indirectly, since each one must be countersigned by a Minister who enjoys the confidence of the legislature. Special acts of executive authority which the President may perform in certain emergencies must be reported at once to the Reichstag and revoked upon its demand. The consent of the Reichstag is required to treaties and

alliances made by the President which involve national affairs. The Reichstag may impeach the President, permit criminal prosecution to be brought against him, or submit to the people a motion to recall him.

The President, in turn, may convene the Reichstag before its regular date for assembling; or he may dissolve it, though but once for the same cause. He has partial appointing power over the Electoral Commission of the Reichstag.

The Reichsrat is a national organ, but it is composed of representatives of the states and is established to give the states an opportunity to participate in national legislation and administration. "Its duties are substantially those of an advisory council . . . to make suggestions and recommendations, to impart information, to approve, to warn, to check, and to delay."<sup>78</sup>

In legislation, the Reichsrat has the right of passing upon bills which the Cabinet proposes to introduce into the Reichstag; of opposing ordinary laws passed by the latter body, with a "suspensive veto"; and of demanding a popular referendum upon constitutional amendments.

The administrative powers of the Reichsrat include the right to receive reports from the Ministers as to the conduct of national business, to be consulted by the Ministers on important matters, and to pass upon ordinances concerning federal laws which are to be executed by state authorities, or ordinances regulating railways and other means of communication and establishing advisory councils for the same. Other administrative powers are bestowed by law from time to time. The powers of appointment and nomination given to the Reichsrat by the Constitution and the laws are very considerable.

Mention has been made of the fact that law, party practice, and custom have brought about interrelations among the various organs of government, quite different from those contemplated by the Constitution. In a very interesting discussion of the recent course of public events, the eminent jurist Poetzsch<sup>79</sup> remarks:

The developments of the past five years have not been favorable to the establishment of the power of the Reichstag.

<sup>78</sup> Oppenheimer, p. 110.

<sup>79</sup> Poetzsch, Jahrbuch, 1925, p. 131.

This holds in respect to all other organs with which, according to the Constitution, it must be associated in public authority. The national President dissolved, with the approval of public opinion and even with the tacit consent of the Reichstag majority at the time, the first and the second Reichstag. Only in individual instances has the Reichstag opposed a will of its own to exceptional measures taken by the national President or the state governments. Through a strained interpretation of Article 48, on the other hand, at the expense of the Reichstag a sort of emergency legislation, by the President and the Cabinet standing behind him, has grown up. Moreover, the Reichstag must desist from its own law-making for numerous long periods . . . while the national Cabinet and its highest authorities, through this and other interruptions in the activity of Parliament, have obtained an un contemplated status of independence. It should be mentioned here, that beside other significant legislative work, the improvement and reform of the judicial organization and procedure was accomplished not by the Reichstag, but (at least principally) by the national Cabinet.

The objection of the Reichsrat, or even the possibility of its being made, gained in significance, especially in times in which, because of party diversions, and the existence of only feeble coalition Cabinets, a parliamentary majority of two-thirds could hardly be depended upon. Even in the very important domain of voting the budget, the Reichstag, under the influence of non-political events, but also because of a lack of unification, has not had a strong position. Not in a single instance has the provision set forth in Article 85, paragraph 2, that the budget must be completed before the beginning of the fiscal year, been observed. The discussion of the budget for the fiscal year 1924 was not reached at all in the calendar year 1924.

These comments, which represent a considerable body of influential opinion,<sup>80</sup> serve to illustrate the truth, which can hardly be over-emphasized, that political and administrative relationships depend not alone upon constitutional or legal provisions, but also to a considerable degree upon such changing factors as political power, personal influence or prestige, and the general economic and social situation.

However, the acknowledgment of this truth does not warrant the rash conclusion that constitutions and laws are meaningless. They can and do control, guide, and limit the forces which act under them,

<sup>80</sup> See for example, Glum, *passim*. Dr. Hugo Preuss said to the writers in 1925: "The particularistic tendencies of the last few years, by weakening the power of the Reichstag, have increased that of the Reichsrat unduly."



even though they yield to some extent to the impact of these forces. Thus, despite all the departures from the exact distribution of legislative and administrative functions established by the German Constitution, the Reichstag is in secure possession of its major powers, namely, those of deciding upon public policies, making the laws, and controlling the administration. The quasi-legislative work of the Cabinet and the President, cited by Dr. Poetzsch as examples of encroachment upon the powers of the Reichstag, do not necessarily endanger these, and may actually strengthen them by freeing the legislative body from matters of detail and thus enabling it to concern itself with major problems of policy. The crux of the matter lies in the location of control over all acts of the administration. Since this is secured to the Reichstag, the growing administrative functions of the Reichsrat, and the exercise of ordinance power which is actually equivalent to legislative power, by the President and the Cabinet, may be considered merely as making adjustments, which do not affect the central fact, that the administration is under the final control of the representatives of the people.

## CHAPTER IV

### THE NATIONAL PRESIDENT

**General Position.** The President of the Reich is chosen at a general popular election for a term of seven years. Reelection is permitted by the Constitution. Any citizen who has reached the age of thirty-five years is eligible to the presidency; but this office may not be held by anyone who is at the same time a member of the Reichstag.<sup>1</sup>

The new law which regulates the details of the presidential election<sup>2</sup> provides that anyone who receives more than one-half of all valid votes is elected. The numerous parties in Germany are so likely to scatter votes and thus prevent any candidate from receiving more than one-half, that the law has expressly provided for such a contingency. When no majority appears, a second election is held, at which the candidate receiving the greatest number of valid votes is elected. In case of a tie, lots are to be drawn.

The unusual institution of a popularly elected president in a parliamentary system of government, as one writer has expressed it, "holds to a mean between America and France;"<sup>3</sup> . . . makes an attempt to unite the advantages of the two systems." The popular election places the President in the position of a counter-balance to the Reichstag, the powers of which, in legislation and control, are so very great that to many minds some other popular organ invested with a certain degree of independence appeared absolutely necessary.<sup>4</sup> The balance between the two authorities is nicely preserved by an arrangement which enables either to appeal to the people in case of an insoluble political conflict.<sup>5</sup> Nevertheless, as

<sup>1</sup> Constitution, Articles 41, 43, 44.

<sup>2</sup> RGBl. 1920, p. 849; latest revision, RGBl. 1924, I, 168; RGBl. 1925, p. 19.

<sup>3</sup> Anschütz, *Die Verfassung des deutschen Reichs*, p. 153.

<sup>4</sup> *Verhandlungen*, etc., Vol. 326, pp. 291, 383, *et passim*; Poetzsch, *Handausgabe der Reichsverfassung*, p. 90 ff.; Koellreutter, *Die Stellung des deutschen Reichspräsidenten*, *Deutsche Juristen-Zeitung*, 1925, p. 551; Anschütz, p. 151 ff.

<sup>5</sup> Constitution, Articles 25, 43.

will be seen later, final control over every official act performed by the President lies with the Reichstag. He cannot, like the President of the United States, surround himself with a cabinet which must obey his orders, and which he may employ in ways unsanctioned by the legislature, and possibly contrary to its will.

Although the President has no direct political responsibility to the Reichstag, he may be accused by it of violations of the Constitution or laws of the Reich. If such impeachment is made, he is tried before the Supreme Judicial Court. While the Constitution does not make definite provision for civil or criminal prosecution of the President, in case he is found guilty of the accusations brought by the Reichstag, yet such prosecution is not precluded if the Reichstag consents to it.<sup>6</sup> The law establishing the Supreme Judicial Court<sup>7</sup> not only acknowledges the possibility of criminal prosecution in connection with impeachment proceedings, but permits the Court either to postpone its own process until the conclusion of the former, or to order the prosecution postponed until the impeachment charges have been tried. Moreover, the Supreme Judicial Court has the right, if the impeachment is sustained, to remove the President from office.

In case the President is unable, for any reason, to discharge the duties of his office, the Chancellor acts in his place. However, if it seems probable that the disability will be a prolonged one, a national law is to regulate the matter of the substitute. The same provisions apply in case of a premature vacancy of the presidency, until a new election is held.<sup>8</sup>

The President's functions are exercised by means of a "Presidential bureau," at the head of which is a secretary of state, assisted by a ministerial adviser, two high administrative advisers, and a ministerial bureau-director. Through this bureau the duties laid upon the President by the Constitution are performed, and official intercourse between the President and the authorities of the Reich and the states is carried on.<sup>9</sup>

The general position of the German President has been ably summarized as follows:<sup>10</sup>

<sup>6</sup> Articles 43, 59.

<sup>7</sup> RGBl. 1921, p. 905; Sections 2, 10, 12.

<sup>8</sup> Article 51.

<sup>9</sup> Handbuch für das deutsche Reich, 1926, p. 2.

<sup>10</sup> Stier-Somlo, Deutsches Reich- und Landesstaatsrecht, Vol. 1.

In the German nation . . . there is a head of state, who unites in himself three functions. The first consists of the worthy representation of the Reich in external affairs, and confers upon him an exalted place of honor. The next shows itself in the coöperative right in the exercise of the state power, very much the same as formerly belonged to the Kaiser. Finally, there falls to him a mediating rôle between the people and the Reichstag. . . .

The national President is . . . the highest national organ with a unitary character, of fundamentally equal position with the Reichstag, with political lack of responsibility, yet with the possibility of removal and impeachment. . . . He has no seat in the Reichsrat, since this represents the German states; the national President, the nation. Moreover, he cannot at the same time be a member of the Reichstag (Art. 44), since he, like it, is elected by the people, and furthermore, has functions to guarantee as against the Reichstag. The national Chancellor and the national Ministers are not his subordinates; there exists no subordinate relationship. . . . His relationship to the national Cabinet is established by provisions which follow from the fundamental principles of the parliamentary system.

**Relation to the Cabinet.** As in other parliamentary governments, the German Cabinet, though responsible to the legislative body, is not chosen by it. The function of selecting and dismissing the Chancellor, and upon his recommendation the other national Ministers, is bestowed by Article 53 of the Constitution upon the President. Since all members of the Cabinet must possess the confidence of the Reichstag, the choice of the President is limited to a considerable extent by this constitutional requirement (Article 54), which embodies a generally accepted principle. However, an extra-constitutional factor limits it still more; namely, the party situation, which makes all parliamentary majorities coalition groups, held together by more or less temporary agreements, among which the agreements as to the Cabinet positions at the disposal of each party hold a conspicuous place. The President may not simply choose the leading man, or one of two or three leading men, from the party in power, to serve as Chancellor; nor may he interpret his own election as a popular mandate to build a Cabinet from his own party. He must choose the man, whoever he may be, and from whatever party, whom the coalescing parties have agreed to accept as the leader of the Cabinet; if there is no such agreement, his choice will be an attempt to bring one about. In the selection of

Ministers the President is guided by the Chancellor, who, in turn, is guided by the exigencies of the political situation.

The President nominally organizes the national administrative departments. This was done a few years ago under a law<sup>12</sup> passed by the National Assembly in 1919, which provides: "The national President shall call together a national ministry for the conduct of national administration, to whom are subordinate all of the national officers and the supreme command of the army." Acting under this law, the President established the national ministries by a decree.<sup>13</sup> Naturally, most of the existing ministries were continued. At various times, later ministries have been abolished or new ones added by presidential decree. Thus, on November 7, 1919, the National Ministry of Reconstruction was abolished; on March 30, 1920, the Ministry of Food and Agriculture was established by a presidential decree; and on March 21, 1923, by a presidential decree countersigned by the national Chancellor and the four Ministers concerned, the National Ministry of the Treasury was abolished and its functions were distributed among other ministries.<sup>14</sup> This power of organizing the national administration, of course, is for all practical intents and purposes under the control of the Cabinet, as in each instance of administrative organization either the national Chancellor alone, or the Chancellor and the Minister or Ministers concerned must countersign the decree.

The requirement that every official act of the President must be countersigned by the Chancellor or an appropriate Minister, who thereby assumes responsibility<sup>15</sup> before the Reichstag, gives the legislature a certain control over the President without subordi-

<sup>12</sup> RGBl. 1919, p. 170, Section 8. See von Freytagh-Loringhoven, *Die Weimarer Verfassung*, p. 164, note 2, for question as to the present legal foundation of such ordinances. This question has never been raised in the courts and is probably of no practical significance, as the President's right to appoint Ministers (RV, Art. 53) would doubtless be held to be sufficient foundation.

<sup>13</sup> *Erllass, betreffend die Errichtung und Bezeichnung der obersten Reichsbehörden*, Reichsgesetzblatt, 1919, p. 327. It should be noted that much authoritative opinion considers the law of 1919 as a merely temporary measure, and bases the President's right to organize departments upon the transfer to him of the customary right of the Kaiser. See Richter, *Die Organisationsgewalt*; Anschütz, Note 4 to Article 53.

<sup>14</sup> The citations to these decrees are as follows: RGBl. 1919, p. 1875; 1920, p. 379; 1923, p. 233.

<sup>15</sup> Article 50.

placing him directly to it. The claim is, sometimes made that this requirement takes from the President all real authority, so that every power and function nominally given to him is actually exercised by the Cabinet. It is probably more exact to say that while the President cannot act without the assent of some member of the Cabinet, yet since there is a margin for adjustment in most matters, the act as finally promulgated will probably represent such a compromise between the personal strength and political views of the President, and those of the Chancellor and the countersigning Ministers, as can best be accomplished without the risk of a vote of lack of confidence for the latter.

**Relation to the Reichstag.** As has been noted, the Reichstag has an indirect control over all acts of the President, through the requirement of the ministerial countersignature.

By asking for a popular referendum on a resolution for his recall<sup>15</sup> (at the risk of its own dissolution if the resolution is not sustained) it may in extreme cases break a policy of opposition to its will; and quite possibly the realization that such a move is likely to be made, may serve as a type of political control. On the other hand, it should be remembered that the President may dissolve the Reichstag,<sup>16</sup> though but once for the same cause, and that this power has actually been exercised more than once,<sup>17</sup> whereas the Reichstag has not as yet ventured to ask the people to recall the President. The shortness of the time which has elapsed since the new Constitution was adopted, however, makes any estimate of the relative importance of the two powers quite worthless.

Direct control over certain acts of the President is given to the Reichstag by Article 48 of the Constitution, which will be discussed later. Any measure which the President may take under the executory and "dictatorial" powers bestowed upon him by this article is to be reported immediately to the Reichstag and revoked upon its demand. Even this control, although direct, is extremely limited in its constitutional aspects, since it involves merely disapproval of an act already committed. Politically, of course, the probability of a demand for revocation on the part of the Reichstag can hardly

<sup>15</sup> Article 43.

<sup>16</sup> Article 25.

<sup>17</sup> RGBI. 1924, I, pp. 173, 713.

fail to influence the President and the Cabinet, when such a measure is contemplated. In practice, the demand for revocation may be immediate, and may serve to prevent the ordinance from going into effect at all.

**Powers and Functions.** The Constitution bestows upon the President an imposing array of powers and functions. In him, as the official head of state, with a position more permanent than that of the changing ministries, are vested executive rights and duties. Yet he is but their nominal possessor, since, as we have seen, his acts depend for validity upon the countersignature of a minister.

*As Head of State.* The general conception of the President's position as the official head of state in Germany is expressed in the following oath of office,<sup>18</sup> which the Constitution requires him to take before the Reichstag when he enters upon his duties:

I swear that I will devote my energies to the welfare of the German people, increase its advantages, guard against injuries to it, uphold the Constitution and the laws of the Reich, fulfil my duties conscientiously, and deal justly with everyone.

The President represents the Reich in its international relations. He concludes alliances and other treaties with foreign powers in the name of the Reich; but such of these as refer to matters of national legislation require the consent of the Reichstag. This means that the President cannot independently conclude treaties concerning legally regulated questions, or such questions as would necessarily be regulated by law (as economic, territorial, and commercial questions), and execute these treaties by the issuing of ordinances.<sup>19</sup> Another important constitutional limitation upon the President's freedom of action in such matters is the provision that the declaration of war and the conclusion of peace are accomplished by national law. The treaty-making power of the Reich, hence that of the President, is considerably limited by certain provisions of the Versailles Treaty of Peace.<sup>20</sup> /

<sup>18</sup> Article 42.

<sup>19</sup> Article 45. Stier-Somlo, p. 610.

<sup>20</sup> These are too long and detailed for discussion here. See the Treaty, Articles 27 ff., 80, 434, 439.

The Chancellor and the Minister of Foreign Affairs must counter-sign all treaties and alliances made by the President. As a matter of practice, they advise him at every step; and international affairs are at times debated by the whole Cabinet.<sup>21</sup> Anschütz points out that the President alone (always subject to ministerial counter-signature) may, under his authority to conduct foreign relations, give binding professions, and perform acts which clearly fall under international law, such as seizures and acts of military power. He says further: "In the power of representation . . . lies also the right to represent the states and their interests against foreign powers; for according to Article 78, paragraph 1, the conduct of German relations with foreign States—of all, and thus of particular ones—is exclusively an affair of the Reich."<sup>22</sup>

Ambassadors to foreign countries are accredited by the President; and those sent from foreign countries to the Reich are received by him.<sup>23</sup>

*In Respect to Legislation.* The promulgation of national laws is a function of the President. Promulgation is accomplished by publication in the national law gazette (*Reichsgesetzblatt*) within one month after their enactment. Prior to promulgation the President is required to verify the laws as to textual accuracy and constitutional manner of passage.<sup>24</sup>

Upon demand by one-third of the Reichstag, the President must postpone promulgation of a statute for one month. If, however, both the Reichstag and the Reichsrat declare a statute to be urgent, the President can promulgate it regardless of such demand for postponement.<sup>25</sup>

The second sentence is a corrective of the first. It is designed to prevent abuses in the application of the minority right bestowed through the first sentence, and especially to hinder obstructionism. . . . If the Reichsrat agrees to the declaration of emergency, the decision rests with the national President. If he also considers the law urgent, he *may* promulgate it immediately; but he may,

<sup>21</sup> Article 50. Poetzsch, *Vom Staatsleben unter der Weimarer Verfassung*, in *Jahrbuch des Öffentlichen Rechts der Gegenwart*, Vol. XIII, 1925, p. 134 ff.

<sup>22</sup> Anschütz, p. 161.

<sup>23</sup> Article 45.

<sup>24</sup> Article 70; see Anschütz upon this article.

<sup>25</sup> Article 72.



following the minority, postpone the promulgation . . . and so prepare the way for a plebiscite according to Art. 73, paragraph 2, in case he does not plan to call for the plebiscite himself on the basis of Art. 73, paragraph 1.<sup>26</sup>

It may be suggested that since the Cabinet will certainly have a considerable influence over the President's decision, one result of the provision which leaves promulgation of a law declared urgent, to the discretion of the President, will be to give the Cabinet an opportunity of making its influence felt. If it considers haste unwise, it may persuade the President to postpone promulgation until the Cabinet has attempted to modify the views of the majority of the Reichstag and of the Reichsrat.

When the promulgation of the statute is postponed by the President upon demand of one-third of the Reichstag, a petition signed by one-twentieth of the qualified voters in the Reich may cause the statute to be submitted to a referendum. This is mandatory, and not at the option of the President,<sup>27</sup> except in regard to the budget, tax laws, and salary regulations, as to which only the President can order a referendum. It is unnecessary to point out the value of this exception from the ordinary rule, and the impossibility of managing any governmental business if the financial decisions were subjected to a plebiscite except under the most extraordinary circumstances.

The President may at any time within a month after the enactment of a statute by the Reichstag, order a referendum upon it before promulgating it. In case of an insoluble conflict between the Reichstag and the Reichsrat over a statute to which the latter objects, the President may within three months order a referendum. If he does not do so, the statute fails of enactment. However, if a two-thirds majority of the Reichstag overrides the objections of the Reichsrat, the President must either promulgate the statute or subject the matter to a referendum. When the point at issue is an amendment to the national Constitution, even though the Reichstag votes for it with a two-thirds majority, the President may not promulgate it, but must submit it to a referendum if this is demanded by the Reichsrat within two weeks.<sup>28</sup>

<sup>26</sup> Anschütz, note 3 to Article 72.

<sup>27</sup> Article 73.

<sup>28</sup> Articles 73, 74, 76.

The object of all these provisions appears to be to furnish a possible corrective to over hasty legislation, noisy minorities, ruthless majorities, popular interference in financial plans, and the like, by an elaborate system of alternative procedures over which the President (always advised by the Cabinet) has a nominal control that theoretically, at least, removes a matter from the judge of policy to the judge of expediency, from the legislature to the executive; or in the end leaves it to the final tribunal of public policy, the people.

*Administrative Functions.* The administrative functions bestowed upon the German President by the Constitution and supporting laws are quite extensive and extremely important.

The powers already discussed, of appointing and dismissing the Chancellor and the Ministers, and of organizing the administrative departments by decree, place him officially at the head of the administrative system. The order of business adopted by the Cabinet<sup>20</sup> with the consent of the President, acknowledges his connection with administration in several places. Thus, it provides that he is to be kept currently informed as to the policy of the Chancellor, and the conduct of business by the individual Ministers, through the transmission of important documents, written communications concerning matters of particular significance, and, upon his request, by personal conference. Provision is made for the handling of written communications between the President and the Cabinet, through the Chancellory. The chief of the presidential bureau has the right to attend regular meetings of the Cabinet. Practice gives the President the right to call special sessions of the Cabinet at which he presides.<sup>21</sup>

The appointment and dismissal of all national officers, including military officers, is a power belonging to the President unless other provisions are made by statute.<sup>21</sup> Several laws control his action in this respect, the chief of which is the national Law of Officers.<sup>22</sup> Article 129 of the Constitution, which provides for

<sup>20</sup> RMBl. 1924, p. 173; Geschäftsordnung der Reichsregierung, Secs. 4, 5, 30.

<sup>21</sup> Poetzsch, Jahrbuch, 1925, p. 135.

<sup>22</sup> Article 46.

<sup>23</sup> For Law of Officers, see RGBl. 1907, p. 61, which is still fundamental, though greatly amended. A 1924 reprint in Von Bieberstein's Verfassungsrechtliche Reichsgesetze indicates the changes to date; and the most important of the other laws affecting public officers follow it (pp. 466-577).

life appointment and other things important to the official status, is also binding upon the President.

Acting upon his authority to delegate the power of appointment and dismissal,<sup>33</sup> by a decree of June 14, 1922,<sup>34</sup> the President assigned this right, in respect to officers of certain salary groups, to the direction of the highest national authorities,<sup>35</sup> with the authorization of further delegation of the right to authorities subordinate to them; reserving to himself, however, the right of decision in special cases. The officers now appointed by the President are in general those of the upper salary groups, as legation secretaries, administrative councillors, consuls, majors; and the officers in Class B, which includes those of very high rank, such as ambassadors and ministerial directors in the highest administrative agencies. It is to be noted here that specific laws provide for the appointment of numerous officers in the upper salary groups by some especial authority. Thus, the heads of the finance courts are appointed by the National Minister of Finance,<sup>36</sup> and several of the directors of the higher administrative boards and authorities are appointed by the Reichsrat.<sup>37</sup> It may be said, then, that because of the wide delegation of power to other authorities, the fact that the laws often make special provisions as to the appointment of officers, the influence of political parties upon the selection of the Chancellor and the Ministers, and the necessity of the ministerial countersignature to all appointments, the President in person exercises relatively little actual power of appointment.<sup>38</sup>

The President has the superior command of the entire military and naval forces of the nation.<sup>39</sup> He, like the former Kaiser, is the commander-in-chief both in peace and in war. However, his actual powers in the exercise of this function are in no way comparable to those of the President of the United States, since each

<sup>33</sup> Article 46.

<sup>34</sup> RGBI. I, p. 577.

<sup>35</sup> The officers included in this class start with the lowest and include the higher technical and non-technical positions, such as higher postmasters, higher inspectors, the chief officers of the navy, etc.

<sup>36</sup> RGBI. 1919, p. 1993, Reichsabgabenordnung, Section 15.

<sup>37</sup> For a list of these see Handbuch für das deutsche Reich, 1926, p. 28.

<sup>38</sup> Poetzsch (p. 137) emphasizes the fact that he may refuse to confirm nominations, leaving positions vacant until candidates who satisfy him are nominated.

<sup>39</sup> Article 47.

action is performed under the countersignature of a responsible minister. Through an ordinance of August 20, 1919,<sup>40</sup> the President has assigned the exercise of the powers of chief of staff, except where he gives direct commands, to the National Minister of War. The National Defense Law, cited above, provides that the President shall exercise the right of issuing military decrees. The President, of course, under his general constitutional rights of appointment, can appoint the chief commanders in the army and navy.

It has been pointed out that the transfer of commanding authority to the National Minister of War does not include the exercise of the emergency or "dictatorial" powers bestowed upon the President in Article 48. Whenever the military force is used to restore public safety and order, such action must depend upon orders from the President.<sup>41</sup>

All public officials and members of the armed forces are required<sup>42</sup> to take an oath of allegiance to the German Constitution, the details of which are arranged by presidential decree. Three days after the adoption of the Constitution such a decree was issued,<sup>43</sup> which has remained in effect without alteration.

The pardoning power for the Reich is a function of the President. This means that he can pardon such persons as have been convicted under national laws, including "those cases in which the Reichsgericht in first and last instance . . . or a consular or marine court, has taken cognizance."<sup>44</sup> The power to pardon refers only to individual cases, since the constitutional Article which grants it provides that amnesties require a national law. In accordance with earlier practice, the pardoning power may be delegated; and several delegations of this power have been made.<sup>45</sup>

<sup>40</sup> Reichsgesetzblatt, p. 1475. This ordinance reads: "I give over the exercise of the superior command to the National Minister of War, insofar as I do not give direct commands." For the particular functions of the President and the National Minister of War, see Wehrgesetz of March 23, 1921, RGBl., p. 329, particularly Secs. 8, 10, 11.

<sup>41</sup> Poetzsch, Jahrbuch, 1925, p. 137. The same author claims that the President's status as the highest military authority makes him the highest instance to decide complaints against military orders.

<sup>42</sup> Article 176.

<sup>43</sup> RGBl. 1919, p. 1419.

<sup>44</sup> Anschütz, pp. 180 ff. Article 49.

<sup>45</sup> An example of delegated power is found in the right bestowed on the national Minister of Finance to remit certain penalties imposed in the administration of the tax code, RGBl. 1919, p. 1993 ff., Section 443.

**Federal Execution.** The Constitution bestows upon the German President the function commonly called federal execution, in the following words:

If a state does not fulfil the duties laid upon it by the national Constitution or the national laws, the national President can hold it thereto with the help of the armed forces.<sup>46</sup>

The language of this authorization is permissive rather than mandatory. It thus leaves to the President, apparently, the option of overlooking a breach of duty of very slight importance, if this seems preferable to causing a considerable disturbance over a minor matter; and the further option of employing milder measures before resorting to the use of force. That federal execution is not always optional with the President, however, appears from the provisions of several other constitutional articles which must be examined in connection with the passage just quoted.

National control, as has been pointed out in an earlier chapter, is exercised over the state in Germany, to keep it within the bounds of its competence, to cause it to fulfil its general constitutional duties, such as that of maintaining a republican form of government, to ensure state conformity with national norms and laws, and to secure the proper fulfilment by the state of the functions entrusted to it by the national laws.

In addition to the general division of competence between the state and the Reich, the Constitution contains a special provision that "national law overrules state law." Differences of opinion as to whether a provision of the state law is consistent with the national law may be settled by the Reichsgericht upon an appeal by the competent central authority of either state or Reich.<sup>47</sup> While undoubtedly, as Triepel points out, the questions brought up under Article 13 will be answered only by opinions,<sup>48</sup> unaccompanied by enforceable judgments, yet the first paragraph of Article 48 permits the view that if a state failed to bring its acts into conformity with the opinion of the court, the President

<sup>46</sup> Article 48, par. 1.

<sup>47</sup> Article 13; RGBI. 1920, p. 510.

<sup>48</sup> Streitigkeiten zwischen Reich und Ländern, in Festgabe der Berliner Juristischen Facultät für Wilhelm Kahl., pp. 54 ff. "The complaint brought by the Reich here is not a complaint for execution . . . the complaint is always a complaint for a decision."—p. 68.

would have the right to bring execution against the state. From the language of the two articles the matter appears optional with the President.

The case is quite different in respect to Article 19, which provides :

Disputes on constitutional questions arising within a state in which no court exists for their decision, as well as disputes, outside the domain of private law, between different states or between the nation and a state, are decided, at the instance of either party to the dispute, by the High Court of State for the German Reich, provided that no other national court is competent to deal with it.

The National President executes the judgment of the High Court of State.

Under this provision the court not only utters an opinion but also delivers a judgment which is to be enforced; and the President is made the enforcing officer. In such a case it is the constitutional duty of the President to enforce the decision of the court, and he has no discretion in the matter.

According to Articles 14 and 15 of the Constitution, the national laws are to be executed by the state authorities, insofar as the laws themselves do not otherwise provide; and the Reich exercises supervision over those matters, regarding which it has power to legislate. The state governments are bound, at the request of the national government, to remedy defects discovered in the execution of the national laws. In case of differences of opinion, either the national government or the state government may appeal for a decision to the High Court of State, unless another tribunal is named in a national statute.

Although the Constitution does not expressly make the national President the executing authority in this particular provision, undoubtedly under the broad powers conferred upon him by Article 48, paragraph 1, he, rather than the Cabinet, would become the executing authority. Here he would seem to be acting merely in a ministerial capacity, in enforcing a decision of the court, which has defined the obligation of the state.

The authorization to bring federal execution would also seem to give the President a wide range of discretion in forcing the state to perform duties which do not come under any of the categories provided for by Articles 13, 15, and 19. Certain situa-

tions might arise which were by their very nature non-justiciable, such as the secession of a state from the Reich, the inability of a state to perform its functions because of sudden insurrection, and the like. Here the President does not have to await the decision of a court before taking action. He acts on his own judgment and his own responsibility,<sup>49</sup> of course with the consent and advice of the Cabinet.

What measures are to be employed for the purpose of execution against a state would seem to lie largely within the discretion of the national President.<sup>50</sup> While the use of the armed force is the strongest measure, it is not the only means that the President may employ. Before resorting to it, he may attempt negotiations and other milder means. The claim is even made that he can use the same kind of measures which are applicable under the dictatorial power (to be discussed later). No final answer, such as a court decision, has been given upon this point,

<sup>49</sup> This view is disputed by Triepel, who holds that the national President cannot act under Article 48 until "the High Court of State or another court has legally established the existence, according to Article 19, 15 or 13, of the circumstances presupposed for execution as set forth in Article 48." (*Op. cit.*, pp. 61-62.) He says further: "But in Article 48, par. 1, the meaning is only that of a right to decide upon execution, not an authorization of dictatorial determination as to the legal presuppositions of compulsory process. The national President can decide only upon the Whether, not upon the Why, of execution. . . ." (*Ibid.*) For the contrary view, see Anschütz, who says: "According to . . . the old national Constitution, execution against individual states which had not fulfilled their constitutional 'confederate obligations' (obligations which fell to them as members of the Reich) was to be decided upon by the Bundesrat, and executed by the Kaiser. Instead of the Bundesrat, not the Reichsrat (as elsewhere in principle), but the national President is placed, who thus unites in his hand the functions which were formerly divided between the Bundesrat and the Kaiser. He has not only to decide personally upon the execution, and to carry it out, but also to decide upon its circumstances; that is, a case of violation of obligations on the side of the state concerned. This decision . . . leaves undisturbed the right of the state to appeal to the High Court of State, according to Article 19, over the question whether it has actually been guilty of a violation of duty; on the other hand, the execution authorized on the ground of Article 48 is not restrained by the contest proceedings before the High Court of State."—*Reichsverfassung*, first edition, p. 106.

Certainly in the cases mentioned, the affair is not justiciable, and to await adjudication in many other cases would greatly endanger the safety of the nation. It may be argued, however, that in such cases the dictatorial power as provided for in the same article of the Constitution may be used.

<sup>50</sup> Poetzsch, *Handausgabe der Reichsverfassung*, p. 99.

as all federal executions to date have been based upon the dictatorial power as well as upon the competence of the President to compel a state to perform its duties under the national Constitution and national laws.

Execution was brought against Thuringia in 1920, against Gotha in 1920, and against Saxony in 1923.<sup>51</sup> In the case of Saxony the national Cabinet issued a clear statement setting forth its views upon the right of federal execution.<sup>52</sup> It maintained that the only limitations upon the exercise of this right are found in the national Constitution, and that within these constitutional limits the President is free to issue all decrees necessary for the maintenance of public safety and order. To this end he can abolish laws, send in the armed forces, or take such economic or financial measures as he may consider necessary. No provision of the national Constitution hinders him, in case of necessity, from removing ministers of a state from service and entrusting other persons with the conduct of business.

In each of these cases the President appointed a national Commissioner to act in place of the state authorities, who were suspended from office. There is no doubt that he was acting within his rights under Article 48; but whether he could have used such means under the first paragraph alone is still an open question.

**The "Dictatorial Power" of the President.** It was the feeling of those most influential in the formation of the German Constitution of 1919, that the troubled situation in Germany due to defeat in war, the great divergence in political feeling, the lack of training in political responsibility, the enormous financial burdens resulting from the war and the peace treaty, and the almost complete breakdown of the government under the Constitution of 1871, necessitated the possible use of some sort of emergency power on the part of the public authorities.<sup>53</sup> It was well realized that a dictator-

<sup>51</sup> See RGBL 1920, p. 343; RGBL 1920, p. 477; RGBL 1923, I, p. 995. It must be noted that while these acts are generally conceded to be executory rather than "dictatorial," they are based on paragraph 2 as well as paragraph 1 of Article 48.

<sup>52</sup> See Stier-Somlo, Vol. I, p. 616.

<sup>53</sup> See Preuss, Hugo, Reichsverfassungsmässige Diktatur, in Zeitschrift für Politik, Bd. 13, 1923-1924, p. 97 ff. See also discussions on Diktatur des Reichspräsidenten, in Veröffentlichungen der Vereinigung der deutschen Staatsrechtslehrer, Vol. 1, p. 63 ff.



ship such as had obtained for a short time during the revolution could not continue if Germany were to be a "legal state"; but it was realized with equal force that there must be created some sort of authority strong enough and free enough from restraints to conquer the dangers to which the country was exposed.<sup>54</sup> In order that such power might exist, and yet be withheld from unrestrained or arbitrary action, it was finally decided to establish in the Constitution itself the possibility of a strong dictatorship.<sup>55</sup>

Article 48 of the Constitution (paragraphs 2-5) furnishes the basis for this institution. It provides as follows:

If public order and safety are seriously disturbed or endangered within the nation, the national President may take all steps necessary for their restoration, intervening, if necessary, with the aid of the armed forces. For this purpose he may suspend for the time being, either wholly or in part, the fundamental rights described in Articles 114, 115, 117, 118, 123, 124, 153.<sup>56</sup>

The national President has to inform the Reichstag without delay of any steps taken by virtue of the first and second paragraphs of this article. The measures that have been taken are to be withdrawn upon the demand of the Reichstag.

Where delay is dangerous a state government may take provisional measures of the kind described in paragraph 2, for its own territory. Such measures are to be withdrawn upon the demand of the national President or of the Reichstag.

Detailed regulations shall be prescribed by a national law.

Before entering upon a detailed discussion of the dictatorship, it is necessary to make certain general observations.

The first of these is the fact that the dictatorship is a constitutional institution. The point cannot be too strongly emphasized that

<sup>54</sup> In the above cited article Dr. Preuss said: "Out of all this a situation must arise which would endlessly endanger the maintenance of the new public order in an almost hopeless battle for life, or would have made it impossible, if the Constitution had bound it absolutely to all limitations, boundaries and guarantees of the highest development of the legal state, which rest upon the presupposition of quite different conditions. If ever in history, dictatorial powers were indispensable to a public authority, they were so for the national government of the young German republic."

<sup>55</sup> The word dictatorship does not appear in the Constitution, but is used by nearly all the authorities who have discussed Article 48.

<sup>56</sup> These rights are, briefly: personal freedom, inviolability of dwelling, secrecy of postal, telegraphic and telephonic communication, freedom of expression of opinion, freedom of assembly, freedom of association, and guarantees of property.

it is not, as so many dictatorships have been, extra legal or extra constitutional or in its nature and application inimical to the Constitution; but that it is the creature of that Constitution, acting to protect it. Although the dictator may exercise far greater powers than belonged to the Kaiser, he exercises them under constitutional control. Whereas under the old Constitution and laws, with the establishment of the "state of siege" or fictitious "state of war," which corresponded in a general way to a declaration of martial law, the final decisive power passed to the military commanders, who were not responsible to the Reichstag; under the new Constitution the President can establish dictatorial measures only with the countersignature of a Minister who is responsible to the Reichstag; and the Reichstag may also demand the abrogation of measures that have been taken by the President. The state ministries, in taking provisional dictatorial measures, are subject to the ultimate control of the President and the Reichstag, since either of them may demand the withdrawal of any such measure taken by a state. The present dictatorship, unlike that exercised by the People's Representatives during the Revolution, is not a sovereign agency, but (to borrow the expression of Schmitt-Durotic)<sup>67</sup> a "commissioned" dictatorship, since a higher authority stands above the dictator, commissions him to act, and controls his actions. The dictator, then, while having exceptionally wide powers, is merely an agent of the people who is given extraordinary freedom of action in order to preserve intact the life of the state.

The new national Constitution thus provides for the absolute supremacy of the civil power over the military power; since the national President is ultimately responsible to the Reichstag, and the state ministries, if not actually responsible to the national President and the Reichstag, are yet under their control in the employment of dictatorial methods.

In the second place, it should be observed that the powers belonging to the national President and to the state ministries under Article 48 are different from the exceptional emergency right com-

<sup>67</sup> *Die Diktatur*, p. 201 ff. See a discussion of the constitutional dictatorship by Dr. Preuss in the National Assembly (*Sten. Ber.*, p. 1331). See the German national Constitution of 1871, Art. 68; also Prussian law of June 4, 1851, p. 451 of compiled statutes, 1851. The same points are discussed in a court decision of 1920 (*RG. St.*, 55, p. 115 ff., especially pp. 116, 117).

monly provided for in the constitutions of the prerevolutionary and present individual German states. Under most of these constitutions the right of taking extraordinary measures shall only be exercised when the legislative body is not in session, or when one or both of the legislative organs may be unable to function properly. A further provision of these constitutions, as a rule, is that emergency ordinances having the force of law shall be submitted to the legislative authority for its approval at its next session, and if the approval is not given the measure immediately becomes void.<sup>58</sup> Neither of these provisions is contained in the present national Constitution. The national President can issue decrees upon the ground of Article 48 equally well whether the Reichstag is or is not assembled. As a result he stands beside the legislative authority in issuing measures which have the force of law, in case the public safety and order are seriously disturbed or threatened. Furthermore, the decrees of the national President issued under the dictatorial power do not require the consent of the Reichstag. The President as the bearer of the extraordinary power exercises it without the request, advice, or consent of the legislature. His powers are not delegated to him by the legislative authority, but are given to him directly by the Constitution. Theoretically speaking, the only power of the Reichstag in respect to such measures is that of demanding their withdrawal.<sup>59</sup>

The next point that should be observed is that the powers of the constitutional dictator in Germany are far greater than the powers

<sup>58</sup> See, for example, the present constitution of Prussia, which provides: "If the maintenance of public safety or the meeting of an unusual emergency urgently requires it, the Ministry of State may, when the Landtag is not in session, in conjunction with the standing committee provided for in Article 26, issue ordinances not in conflict with this constitution, which shall have the force of law. Such ordinances must be submitted to the Landtag for approval at its next session. If the approval is refused, the ordinances must be immediately declared void by notice in the Law Gazette" (Article 55). It should be noted that the emergency powers thus bestowed upon the Ministry are not "dictatorial" in nature. They must not conflict with the Prussian Constitution; nor, since this must be in harmony with the Constitution of the Reich, can the emergency powers of the state Ministry conflict with the national Constitution.

<sup>59</sup> In practice, of course, the measures may be formulated by the Cabinet or individual Ministers. These are necessarily influenced in their actions by the attitudes, expressions and opinions of the Reichstag, its committees, or its factions. For further reference on this second point, see Grau, p. 17 ff.

of the President of the United States or the governors of states in this country, in connection with emergency measures such as the suspension of the writ of habeas corpus and the declaration of martial law. This is true both in respect to the conditions under which action may be taken, and the measures that may be employed. Whereas in the United States any comparable measure may be taken only when "rebellion or invasion" requires it for public safety,<sup>60</sup> the German President appears to have the right to take action under the grant of dictatorial powers, when "the public safety and order are seriously disturbed or threatened" from any cause, be it rebellion, insurrection, economic disturbances, or natural cause.<sup>61</sup> Furthermore, he has a far greater range of methods that may be employed, since he is not only given a general "blanket" grant in the words "may take the necessary measures," but is also specifically given the power to use the armed force and to suspend important rights otherwise guaranteed by the Constitution.

A very important feature of the dictatorial power is the fact that under certain conditions this power may be exercised by a state within its own boundaries. It is interesting to note, however, that state laws or constitutional provisions regarding the state of siege, martial law, and the like, which regulate the use of dictatorial powers, have been superseded by the national constitutional provisions. A decision of the Reichsgericht<sup>62</sup> says: "The regulation [under Article 48] is . . . exhaustive, and leaves no further room for regulation by state law in regard to the same matter." The situation is well summarized as follows:

The result of the provision is: The dictatorship has found its exclusive regulation in article 48 of the Constitution. This article contains the law now applicable, though a more detailed regulation through an executory law is to follow. All legal provisions issued before the national Constitution, concerning the extraordinary

<sup>60</sup> United States Constitution, Article I, Section 9, provides: "The privilege of the writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Willoughby, W. W., in his *Constitutional Law of the United States* (Students' Edition, 1912), Chapter LII, gives an excellent brief discussion of the use of martial law and the suspension of the writ of habeas corpus in the United States and in the states, which warrants the conclusions of the present text.

<sup>61</sup> This will be discussed in detail later.

<sup>62</sup> RGSt. 56, p. 177 ff.

power, stand in contradiction to the national Constitution and are therefore of no force; the same is true for the earlier state provisions. New state legal provisions upon the territory of the dictatorship may not be issued, because the states lack all competence in this respect.<sup>63</sup>

This is in strong contrast to the system in vogue in the United States, where each state has the right to lay down its own requirements in respect to martial law and the suspension of the writ of habeas corpus, which are the extraordinary measures comparable to the dictatorial power in Germany.

Finally, it should be observed that although the Constitution provides for a law "making detailed regulations concerning the exercise of the dictatorial power, no such law is extant as yet. This is probably due to a feeling that in the time of stress through which Germany has been passing, there should be no limitations upon the dictatorial powers beyond those established by the Constitution."<sup>64</sup> As time passes, however, and the probability of disturbances requiring immediate and stringent action becomes more remote, it is urged in many quarters that a law is needed which shall govern the use of the dictatorial power.<sup>65</sup>

*Nature and Exercise of Dictatorial Power.* In examining more closely the position of the dictatorial authorities, the first question which arises is: What is the nature and scope of the dictatorial power and what are its limitations?

<sup>63</sup> Grau, p. 31. Preuss, p. 108, says: "The regulation of the dictatorship is accomplished by Article 48 of the national Constitution; the matter is thus shown to be within the exclusive competence of the Reich and offers no further opportunity for regulation by state law." However, Nawiasky says: "Insofar as extraordinary powers are provided by the state constitutions for interpositions in the domain of state law, no change was meant to be brought about here through the national Constitution, and therefore none has been brought about."—Die Auslegung des Article 48 der RV. in Archiv des Öff. Rechts, 1925, N. F. 9, p. 1 ff.

<sup>64</sup> Article 48, par. 5.

<sup>65</sup> See Preuss, p. 105: "But the most pressing urge to the earliest possible passage of such a law . . . springs more from the requirements of judicial refinements than from the political exigencies of the present situation. Such a law will place legal limitations upon important aspects of the dictatorial authority, and will thus lessen it to a certain extent."

<sup>66</sup> For the argument for the creation of such a law, see Dr. Hans Nawiasky, Das Durchführungsgesetz zum Artikel 48 der Reichsverfassung, in Das Recht, September 20, 1924, p. 455 ff.; also Prof. Dr. Thoma, Die Regelung der Diktaturgewalt, D. Jur. Zeitung, 1924, Heft. 17-18, p. 654.

The dictatorial powers of the German President are bestowed in two distinct parts:

1. The general grant, by which he is given the authority to take all measures necessary for the restoration of public safety and order.
2. The special grants, which include specified methods of action, namely, the suspension of certain fundamental rights and the intervention of the armed force.

The first grant is in the nature of a general authorization enabling the President to take any measure necessary for the restoration of public order and safety if these are seriously disturbed or endangered within the Reich. Nothing is said in the Constitution as to the nature of the measures that are to be employed, or whether they may extend to spheres over which the state has control. In practice, the acts accomplished by the German President under this grant, and many court decisions in regard to such acts, demonstrate that he may issue decrees with the force of law<sup>67</sup> or empower another authority to issue such decrees, set aside existing law or supplant existing law with his decrees having the force of law, or establish special tribunals.<sup>68</sup> Nor is it necessary before he takes such action to make a declaration of a state of war or siege. The courts have said in the clearest terms that such preliminary formalities are unnecessary, and that the President can proceed according to his own judgment as to necessary measures. Even if an "exceptional situation" on the order of a state of siege is declared, the civil authorities may still remain competent, with the military authorities at their disposal.<sup>69</sup>

<sup>67</sup> Ent. d. RGSt., Bd. 55, pp. 115, 116; Bd. 56, p. 161 (163) 419 (420); Bd. 58, p. 269 ff.

<sup>68</sup> The criminal division of the Reichsgericht has said that Article 48 of the national Constitution bestows upon the President "insofar as no special constitutional provisions forbid, the general right to take any measures . . . suitable to the ends there set forth, in all domains of public power. He may therefore within the prescribed limits not only issue ordinances legislative in nature, but may also intervene in the public administration of any individual state; for example, he may forbid the further activities of any extant state or national authorities, and give over their official duties to other extant state or national authorities."—RGSt. Bd. 59, p. 41 ff. (January 19, 1925).

<sup>69</sup> See RGSt. 59, p. 30; *idem*, p. 49; Poetzsch, Handausgabe der Reichsverfassung, p. 100, note 8; Wittmayer, Die Weimarer Reichsverfassung, p. 356 ff.

Although the dictator is a national authority, he may also issue decrees upon matters which are otherwise reserved for state legislation. In so doing he may not only interfere with individual measures of state administration, but may also issue decrees of more general application.<sup>70</sup> Thus, he may supplant the provisions of the state constitution, state laws, and ordinances, with his own provisions. There are, however, certain limitations upon the exercise of the national dictatorial power in respect to a state. The dictator cannot act in the name of the state, but may only administer in the name of the national government. As a result he can authorize no measures in the name of the state; nor can he appoint and dismiss state officers (though he may suspend them), or dismiss the Landtag, or exercise the legislative powers of the state.<sup>71</sup>

Under the general grant of power the President may issue decrees which assign the right of taking necessary measures to other authorities, national, state, or local; or which establish new authorities. These authorities, however, do not have independent delegated powers, but act as agents of the national President.<sup>72</sup>

What are the limitations upon this broad grant of power?

The first is that the measures must serve the purpose of restoring public safety and order, when seriously disturbed or endangered, since the right of employing them is bestowed for this purpose only. The President may not use the dictatorial power to change the form of the state or to alter essentially its structure or functions. He is limited to the reestablishment of the situation which existed prior to the threatened disturbance. Dr. Muhr says:

It is . . . clear that the establishment of a new political situation does not belong to the functions of the dictator. Above the individual personality there stands a higher legal entity, the state. The dictator is a component part of it; he cannot raise himself above it and can change nothing in it; his function ends with

<sup>70</sup> Grau, pp. 107-08. RGSt. Bd. 59, p. 41 ff.

<sup>71</sup> Grau, p. 108. See Poetzsch, *Vom Staatsleben*, etc., p. 99, for a case in which the agent of the dictator forbade the assembling of a Landtag, but was forced to revoke this order upon the demand of the Reichstag. See Wittmayer, Leo, *Europäische Organisationsfragen der Weimarer Verfassung*, in *Zeitschrift für Politik*, Bd. 13, p. 214 ff., especially p. 243 ff. See RGSt. Bd. 59, p. 48 ff., p. 189 ff.

<sup>72</sup> Grau, p. 109 ff.; RGSt. Bd. 59, pp. 189 ff.

the reestablishment of a situation of external order, in which the political state power can again operate peacefully.<sup>73</sup>

This limitation presents great difficulties as to exact definition. Such words as "public safety and order," "seriously," "necessary," "temporarily," are not easily subject to precise definition. Of necessity the dictator must be given great leeway in the exercise of his judgment; yet he must not abuse his powers by using them in an arbitrary and unauthorized manner. The criminal division of the Reichsgericht has said (after holding that the judge is not in general to examine into the discretionary matters of actual danger to safety and order or the type of measures employed):

He [the judge] must hold himself limited to the question, whether the bearer of the dictatorial power of the decree under consideration has at least exhibited the purpose specified in Article 48 of the national Constitution; and for this it is sufficient as a rule that in issuing (the decree) he assumes his political responsibility, acts for the purpose of restoring the seriously disturbed or endangered public safety and order, and that—insofar as the authorization of a state government enters into the question—it obviously considers that there is imminent danger in delay. Only insofar as there can be established an obvious misconstruction of the legal requirements of procedure on the ground of Article 48 of the national Constitution, or a sheer wilful misuse of authorization to the prosecution of an absolutely foreign end, will the ordinance lack legal validity.<sup>74</sup>

The court has held on other occasions that whether the actual conditions exist, which are presupposed in Article 48 for the issuing of a decree, is a matter for the decision of the national President alone, and that it is removed from judicial examination.<sup>75</sup>

The second limitation upon the exercise of this broad grant of powers is that the President is bound to the provisions of the national Constitution.<sup>76</sup> Under the terms of Article 48 he would

<sup>73</sup> Die Wirtschaftliche Diktatur des Reichspräsident, in *Zeitschrift für Politik*, Vol. 13, pp. 483-84.

<sup>74</sup> RGSt. 59, p. 185 ff. This case involves the exercise of powers under Article 48 by a state rather than by the national President; but the language of the court is obviously meant to lay down general principles.

<sup>75</sup> RGSt. 57, pp. 384, 385; RGSt. 58, pp. 269, 271.

<sup>76</sup> RGSt. 59, p. 41 ff.; Grau, p. 50 ff.; Preuss, p. 105; Statement issued by national Cabinet in the conflict with Saxony, given in Stier-Somlo, Vol. I, p. 616.



also be subject to any limitations which might be placed upon him by the law therein provided for, which is to make more detailed provisions for the carrying out of this article; but, as has been noted above, such a law has not yet been passed. Of course he is not bound by the provisions of the Constitution which he is expressly authorized to suspend; and some authors have held that he is not bound by constitutional articles subsidiary in nature to the seven great general principles of fundamental rights which he can set aside; such, for instance, as the guarantee of freedom of trade and industry under Article 151."

Finally, the measures taken under Article 48 must be repealed as soon as the public safety and order have been restored. The criminal division of the Reichsgericht has said:

That the measures taken on the ground of Article 48 of the national Constitution are not finally valid for all time, may be determined especially from the fact that they are only taken for the restoration of seriously disturbed or endangered public safety and order. But this in no wise prevents the national President from instituting such dictatorial measures for an unspecified period, if the public safety and order whose restoration he seeks would, in his opinion, if the measures were not continued, probably be increasingly disturbed or endangered for a long time."

While, then, the President is limited by the fact that his measures are only temporary in nature, even here he has a very large amount of discretion.

*The Part Played by the State in the Exercise of the Power.* As has been observed previously, the dictatorial power is given entirely into the hands of the Reich. But at the same time the state is made an agent of the Reich, in exercising the dictatorial power independently but provisionally, within its own boundaries, in case delay is dangerous. The state governments have such powers "solely and exclusively in place of the temporarily hindered national authority, only upon condition of such hindrance and only

" Muhr, pp. 494-95. Many questions as to Article 48 are still in the realm of political theory because no final answer has been given to them by the courts. The citation above (""), however, seems to indicate that the courts consider the Constitution in general binding upon the President even when he is exercising dictatorial powers.

" RGSt. Bd. 59, p. 30.

for its duration.”<sup>79</sup> The dictatorial measures taken by the state are to be withdrawn upon the demand of the national President or of the Reichstag.

It is generally conceded that the state cabinet, which according to the national Constitution is the agency for the exercise of dictatorial power by the state, may exercise virtually the same kind of powers as the national President.<sup>80</sup> However, the state cabinet is more narrowly limited in the exercise of these powers than is the President. In the first place, it may exercise them only in case there is danger from delay; and in the second place, it may exercise them only until the President takes action. The dictatorial acts of the state are always temporary and provisional measures, subsidiary to national measures. The provisional suspension of the fundamental rights listed in the second paragraph of Article 48 is within the power of the state; as are various methods of a less severe kind. While the state does not have power to command the services of the national army or navy, it may request them in case it is unable to deal with a disturbance. The military or naval commander to whom the request is made must grant it unless he believes that there is urgent reason for refusing, in which case he must notify the national Minister of War immediately, in regard to his decision.<sup>81</sup>

The question may very properly be asked: Since the state governments, when exercising the powers bestowed by Article 48, are national organs acting under national laws in a provisional way until the President can act, are they agents of the President and therefore subordinate to him? This question must be answered in the negative. The state government does not act as a delegate of the national President. Its authority is not bestowed by the President,

<sup>79</sup> Preuss, p. 110. See also Poetzsch, pp. 36-37. RGSt. Bd. 59, pp. 191 ff.

<sup>80</sup> Strupp, *Das Ausnahmerecht der Länder nach Article 48 IV der Reichsverfassung*, in *Archiv des Öffentlichen Rechts*, 1923, p. 187, ff.; Grau, p. 139 ff. A court decision of 1925 (RGSt. Bd. 59, p. 189) speaks of “the dictatorial powers bestowed by Article 48 RV. . . . upon the national President and the state governments.” See also RGSt. 56, p. 189, which says that “Article 48 bestows directly upon the national President and the state governments a right . . . to take all measures which appear to them to be necessary (etc.).”

<sup>81</sup> National Defense Law (Wehrgesetz) RGBL. 1921, pp. 329, 787, 960; Section 17.

but by the Constitution itself.<sup>83</sup> Therefore, the President does not have a supervisory control over the states in their exercise of dictatorial powers. All that he can do in regard to a dictatorial ordinance as such is to demand its abolition, or virtually make the decree his own. Dr. von Delbrück, in the Constitutional Convention, said: "If because of imminent danger the central authorities of the states must themselves issue such decrees, they must notify the national President of these; and he decides either 'You shall revoke the decree!' or he says 'I am in accordance with it.' If he is in accordance with it (and it is still necessary), he makes this decree his own."<sup>84</sup>

The President may not wish to deal directly with a state ordinance in either of these ways, but may prefer to issue an ordinance having the force of law, which handles the same situation toward which the state ordinance is directed, in a different manner. The courts are very clear upon his right to do this. An opinion on this point states:<sup>84</sup>

If the national President . . . considers for the same reason as the State Cabinet . . . that a dictatorial intervention on his part is needed . . . he as the chief bearer of the constitutional dictatorial authority can always require for his finally valid measures precedence over the purely provisional ones of the state cabinet. . . . The latter will therefore be entirely superseded and invalidated, with no need for a special withdrawal. This will be the case . . . if the nature of the measures taken by him is entirely incompatible with the further existence of the provisional measures. . . . If [there is doubt] . . . whether it is possible for the measures of the two dictatorial authorities to coexist, the question . . . will fundamentally depend upon whether the will of the national President is . . . to invalidate the provisional measures of the state government, or to permit them to coexist with his own—in whole or in part, continuously or . . . merely for a fixed transitional period.

Neither the President nor the Reichstag may revoke measures taken by the state cabinet. They can only demand that the state cabinet revoke the measures. In case the state cabinet does not

<sup>83</sup> See Strupp, pp. 187-89; Preuss, p. 110. The Reichsgericht has said (RGSt. Bd. 59, p. 192) that the states "possess a special dictatorial power of their own, likewise resting directly upon the national Constitution."

<sup>84</sup> Sten. Bericht, p. 1336.

<sup>84</sup> RGSt. Bd. 59, p. 185 ff.

comply with such a demand, it unquestionably commits a breach of the Constitution. There is considerable dispute as to the methods which the President might use to force the state to revoke measures under these circumstances. It has been argued that the courts could not adjudicate such a matter under Articles 13, 15, and 19 of the Constitution, as the refusal of the state to comply with a demand for revocation is not a case falling under these articles; and that the obligation to comply with the demand for revocation is not a duty of the state but of the state cabinet, which acts in this matter as a national organ. Dr. Hugo Preuss, however, claims that these objections are merely formal and scholastic; that "such an opposition of state and state cabinet is theoretically false; their unity cannot be broken, even though the state government and the national authorities are acting to execute a national law"; and that the President may bring federal execution against the state to compel revocation of the ordinance in question.<sup>85</sup>

Although there have been several so-called executions against states, in no case has the matter been free from the exercise of the dictatorial power. To date there has been no execution against a state for failure of the cabinet to revoke its measures upon the request of the national President. In the famous case where the state refused to do so (the Bavarian case under the Law for the Safety of the Republic) the President did not bring execution, but strongly intimated that he could take such a measure. He wrote as follows:

The ordinance passed by Bavaria in consequence of this law is, in my opinion, and the opinion of the national Government, contrary to the national Constitution. . . . Out of my guardianship of the national Constitution and the national idea (*Reichsgedanken*) grows the duty to work, in accordance with Article 48 of the national Constitution, toward the revocation of the Bavarian ordinance. But I would decide upon such a step . . . only if I should come to the conviction that the last measures for an understanding concerning a speedy settlement of this conflict have been exhausted. . . . I beg you, therefore . . . in the interest of our German people and country, which are equally dear to both of us, to take into consideration once more, whether it does not appear possible to you to spare yourself and me this undesirable step.<sup>86</sup>

<sup>85</sup> See Strupp, pp. 188, 205; Grau, p. 146; Preuss, p. III.

<sup>86</sup> Quoted in Bavaria and the Reich, by Johannes Mattern, p. 70.

The ordinance was revoked under the terms of an agreement in which both the state and the Reich made concessions.

We have already seen how the veiled threat of use of the dictatorial power was employed in persuading Hesse to revoke an ordinance which the national Cabinet considered illegal.<sup>87</sup>

These examples and others of like nature warrant the opinion that milder means of securing the revocation of measures by state governments may be quite as effective as the severe methods specifically mentioned in the Constitution; that negotiations, threats, arguments and conferences may secure the desired end, thus sparing Reich and state the disagreeable consequences of suspension of constitutional rights and the use of the armed forces.

*Methods of Exercising the Power.* The Constitution makes no mention of the methods that shall be employed to restore public safety and order, other than the use of the armed forces and the suspension of certain fundamental rights. It is generally agreed, however, that these are in the nature of extremity measures, and that milder ones may and should be employed where they appear sufficient. The practice during the past eight years has developed several distinct methods by which the President attains his ends, and the courts have repeatedly upheld his right to employ all these methods.<sup>88</sup> As in the cases arising under the right of federal execution, negotiations and agreements have been employed frequently. A study of presidential decrees under Article 48, which are too numerous to be listed here, shows a variety of measures. In case of rather slight civil disturbances, the President has extended or made more severe general criminal provisions, or extended the power of the ordinary authorities through the setting aside of any or all of the seven fundamental rights named in paragraph 2 of Article 48 of the Constitution, thus enabling the authorities to proceed with a minimum of limitations. Where his decrees or those of his agents affect the sphere of interests protected by the constitutional guarantees, it is necessary for him to set aside such guarantees.

<sup>87</sup> See Chapter II.

<sup>88</sup> See RGSt. Bd. 55, p. 115 ff., where the court says that under Article 48 the President can "unquestionably take any measure necessary to the restoration of public safety and order. . . . Absolutely everything that the circumstances require is to be permitted to him, for guarding against the dangers that menace the Reich." See also RGSt. Bd. 59, p. 47; Bd. 56, p. 189; Bd. 59, p. 29 ff.

In a number of cases the President has appointed an agent, or authorized the appointment of an agent, who is given the right to take steps necessary for the restoration of public safety and order. A good example of this method of procedure is found in a presidential decree of 1921,<sup>89</sup> which appointed a commissioner to restore public safety and order in Saxony. In this case, the President set aside the seven articles of fundamental rights guaranteed in the Constitution, and permitted the Minister of the Interior to appoint a commissioner of the national government who was authorized to take measures necessary for the restoration of safety and order. The commissioner was placed under the control of the Minister of the Interior and had to follow his directions. All civil administrative authorities of the Reich, the states and the localities, in so far as their sphere of operations fell within the district concerned, had to follow the directions of the commissioner regarding their activities. In case the commissioner required military assistance, he was authorized to ask the national Minister of the Interior for aid, but in case of urgent danger he was authorized to ask the commander of the military district or the nearest local military station for help. For the carrying out of his functions the commissioner was given authority to issue appropriate ordinances. A special tribunal was given the right to decide cases arising from the limitations upon personal liberties established by the decrees of the commissioner.

All these provisions are fairly typical of the methods generally employed. State or local officers rather than outside agents, may be authorized to exercise the dictatorial powers; in this case they act as national agents rather than state or local agents.<sup>90</sup>

In case military force is required, the control is ordinarily given over to the national Minister of War, who appoints a military commander for the district. The civil administration under such circumstances is usually conducted by a civil commissioner, who is appointed by the Minister of War in understanding with the Minister of the Interior.<sup>91</sup>

<sup>89</sup> RGBl. p. 253.

<sup>90</sup> Dr. Preuss says: "The state government [the same would be true for local] acts, on the basis of Article 48, as an organ of the Reich."—p. 110.

<sup>91</sup> For examples of this form of control, see Reichsgesetzblatt, 1920, pp. 41, 207, 1477. For the extraordinary court, see RGBl. 1920, p. 479 ff.

Finally, under the dictatorial power the President may take economic and financial measures of various sorts. Such measures have had very far-reaching results and probably have led to more unfavorable criticism of the use of the dictatorial power than any other dictatorial measures. During the years 1923 and 1924, the President issued some forty-two ordinances of an economic nature.<sup>92</sup> Only a few of these can be mentioned here:

By the so-called seizing of securities decree of September 7, 1923,<sup>93</sup> the President appointed a commissioner with extraordinary powers, who was authorized to seize for the Reich, means of payment and claims in foreign securities and precious metals. In this case the sanctity of residence, secrecy of correspondence, postal, telegraphic and telephonic communications, as guaranteed in the Constitution, were set aside.

On October 13, 1923, the President issued a decree authorizing the national Minister of Economics to lower the price of fuel established by the national coal association without a preliminary hearing of the national coal council and the national coal association, and repealing the coal tax law of March 20, 1923.<sup>94</sup>

On December 7, 1923,<sup>95</sup> the President issued the tax emergency ordinance, which greatly changed the income tax law and other tax laws.

Ordinances of 1923 and 1924<sup>96</sup> made it the duty of localities to provide shelter for citizens of Germany banished from the occupied territories.

The decree of November 8, 1924,<sup>97</sup> provided that states and communities must secure the assent of the national Minister of Finance, when raising loans in foreign countries.

While these are only a few of the economic decrees,<sup>98</sup> they illustrate the vast power which the President, with the Cabinet as his agents and responsible advisors, may exercise in the economic field.

<sup>92</sup> This list includes, of course, the abolition of several decrees of an economic nature. For an example of unfavorable criticism, see article by Dr. Lobe in *Deutsche Jur.-Zeitung*, January 1, 1925, p. 15 ff.

<sup>93</sup> *RGBl.* I, p. 865.

<sup>94</sup> *RGBl.* I, p. 945.

<sup>95</sup> *RGBl.* I, p. 1177.

<sup>96</sup> *RGBl.* 1923, I, p. 381; 1924, I, p. 664.

<sup>97</sup> *RGBl.* I, p. 726.

<sup>98</sup> For complete list of the economic decrees of 1923 and 1924, see Poetzsch, pp. 142-47.

Before leaving the subject of method, a few special points should be noted. •

In the first place, it should be remembered that all methods employed for the exercise of the dictatorial power involve the use of the written, signed, and countersigned document known as the decree or ordinance. The general rule which requires all the President's acts to be countersigned by the Chancellor or a Minister holds in regard to dictatorial acts as well as any others. Even if orders may actually be given orally in some time of emergency, they must be backed by a written document in order to be valid and enforceable.<sup>99</sup> Presidential ordinances having the force of law are published in the national law gazette, as a matter of custom, although this is not necessary to their validity.

A word is needed also on the subject of special courts. The Constitution provides<sup>1</sup> that exceptional courts shall not be allowed; yet in a number of cases special courts have been established by decrees based on Article 48; and in March, 1921, a decree<sup>2</sup> based on this article established extraordinary courts throughout the Reich for the trial of certain specified types of cases, such as those arising from the illegal carrying of weapons and various other acts likely to disturb the peace. While the establishment of such courts has been bitterly attacked as unconstitutional,<sup>3</sup> yet the Ministry of Justice and the regular courts have upheld them as being "special" rather than "exceptional."

In order to protect citizens against arbitrary acts of the authorities exercising dictatorial powers, it has been the general practice.

<sup>99</sup> See RGSt. Bd. 55, p. 1191; Bd. 56, p. 340; Bd. 57, p. 131; also Grau, p. 134 ff. On publication, see Hatschek, *Deutsches und preussisches Staatsrecht*, Vol. II, p. 90 ff., 125 ff. The law on publication is found in RGBl. 1923, I, p. 959. The courts have held in the cases above cited, which were decided before the passage of the law, and also in a case subsequent to the passage of the law (RGSt. Bd. 59, p. 196), that any notice is sufficient for ordinances under Article 48, which makes it possible for them to become generally known. See further, Poetzsch, *Vom Staatsleben*, etc., p. 193.

<sup>1</sup> Article 105.

<sup>2</sup> RGBl. 1921, p. 371.

<sup>3</sup> See debate in Reichstag, *Verhandlungen*, Sten. Ber. Bd. 349, p. 3333 ff. Also Poetzsch, *Handausgabe der RV.*, note 2 to Article 105. Exceptional courts are held to be those established without legal authorization; whereas Article 48 is sufficient authorization for the establishment of special courts. RGSt. Bd. 56, pp. 163, 165. See the discussion by Anschütz (note 3 to Article 105); see Kern, *Der gesetzliche Richter*.



where dictatorial decrees affect the rights, duties, property, or liberty of individuals, to provide some sort of legal remedy in the decree itself. Where special courts are not established for the hearing of cases, a complaint to a national Minister is usually provided. Thus, if a commissioner has been appointed to restore public safety and order in a state, the right of complaint against the decrees of the commissioner may be made to lie to the Minister of War, or the Minister of the Interior, as the case may be.<sup>4</sup>

The objection<sup>5</sup> has been made that the citizen is not hereby rendered wholly secure in his rights, since whether or not such legal remedies are provided is a matter entirely within the discretion of the President, who remains independent from the control established over the acts of his agents. It may be argued, on the other hand, that since the detailed decrees which affect individuals directly are usually issued by a subordinate authority, from whose decisions appeal to a Minister is customarily provided (where no courts have been established for this purpose), at least appeal is frequently permitted to an authority that is responsible to the legislature. Since Article 105 of the Constitution may not be set aside, it is conceivable that the provision here established, that no one shall be deprived of his rightful judge, opens the ordinary courts to the citizen when no special tribunal is provided. However, the uncertainty and the unusual nature of the special tribunals have caused much dissatisfaction, and there is little doubt from the general trend of the literature on the subject that when the contemplated law concerning Article 48 is finally passed, it will embody the principle that legal redress through more than one instance must be made available to every individual affected by an act of the executive authorities, even when they are making use of the so-called dictatorial powers.

Finally, it must be kept in mind that the ordinances issued by the President under Article 48 have the force of law and will be enforced by the regular courts as a part of the law of the land. According to German legal doctrine, constitutional provisions,

<sup>4</sup> An examination of all the national dictatorial decrees to date proves this point.

<sup>5</sup> Grau, p. 150. For discussion of the need of a law governing the details of Article 48, see Stier-Somlo's report of a conference of German teachers of public law, *Archiv d. Öff. Rechts*, 1924, n. F. 7, pp. 88-97.

statutes, customary law, and ordinances having the force of law, are all binding upon the citizen and must be enforced by the judge. Consequently, the citizen is liable under dictatorial ordinances, even where no special courts are established. The President may count upon the regular administration of justice as an agency in the enforcing of such ordinances.<sup>6</sup>

*Controls Upon the Dictatorial Power.* From all that has gone before, it will be seen that the President's use of the dictatorial power is subject to numerous controls. In this, as in every act, he is subject to the general controls discussed earlier in the chapter; and may therefore be impeached, recalled, or possibly even criminally prosecuted, for abuses of power. While the courts, as has been seen, refuse to examine into the expediency of his acts, yet they do consider the legality of these acts, their constitutional foundation, and the like.<sup>7</sup>

Countersignature of the President's dictatorial measures by a member of the Cabinet is much more than a formality. It may and frequently does mean that the power nominally belonging to the President is actually exercised by the Cabinet.<sup>8</sup> The relation of the Cabinet to the Reichstag thus gives the Reichstag a further control over dictatorial acts than the simple right of demanding revocation which it derives from Article 48.

<sup>6</sup> RGSt. Bd. 55, p. 115 ff.; Bd. 56, p. 161 ff.; p. 419 ff.; Bd. 58, p. 269 ff.; Bd. 57, p. 385.

<sup>7</sup> See cases cited in preceding note.

The *New York Times*, Sunday, April 11, 1926, prints a translation of an introduction to the German edition of James M. Beck's "Constitution of the United States." This introduction was written by Dr. Walter Simons, President of the Reichsgericht. An interesting suggestion that the courts of Germany may not always maintain their attitude of refusing to examine into the expediency of discretionary acts, or the nature of measures taken in a legally correct manner on the basis of Article 48, is found in the following passage from Dr. Simons's article: "I . . . have come to the conclusion . . . that our republic cannot continue to exist if the power of the judiciary, as compared with the legislative and executive powers, is not given a stronger position and greater jurisdiction than heretofore. The fact that . . . the executive resorts to emergency measures, for which, in many cases, there is no foundation in the Constitution, presents a condition which should not be allowed to continue further." Dr. Simons expresses similar ideas in an address reported in the *Deutsche Juristen-Zeitung*, December 1, 1926, p. 1665 ff.

<sup>8</sup> For discussion of the relationship between the President and the Cabinet, see article by F. J. Wuermeling in *Archiv des Öff. Rechts*, N. F. 11, Bd. 3, 1926, especially p. 364 ff.

It should be noted that debates in the Reichstag show that this body considers the Cabinet the actual bearer of responsibility for ordinances issued under Article 48. Thus in the session of December 16, 1921,<sup>9</sup> several speakers take this attitude in regard to the question of demanding revocation of the presidential ordinance of September 28, 1921,<sup>10</sup> which limited freedom of travel, assembly, and the like. For example, Dr. Haas, speaking for the German Democrats, says:<sup>11</sup>

"Our standpoint is simple and clear. We say: So long as the Cabinet considers this ordinance necessary, so long . . . shall the ordinance remain in effect, until the moment when we consider the policy of the Cabinet so false that we must overthrow the Cabinet."

Although the argument to support the Cabinet (not the President) was repeatedly brought forward, and although the legal committee of the Reichstag reported unfavorably on the demand for revoking the ordinance, the Reichstag passed in one vote three motions demanding revocation.<sup>12</sup> This is the only instance in which such a demand has been made, although motions of a similar nature have been introduced several times. The revocation of the ordinance in question was effected by another ordinance<sup>13</sup> one week after the vote of the Reichstag was taken.

On April 20, 1921,<sup>14</sup> a motion came before the Reichstag, the object of which was to demand the revocation of the presidential ordinance of March 21, 1921, which established extraordinary courts under Article 48. Another motion was introduced to petition the Cabinet to amend the same ordinance in certain specified points. The two motions were debated in stormy discussions at three sittings of the Reichstag;<sup>15</sup> finally the first was

<sup>9</sup> Verhandlungen, Sten. Ber., Vol. 352, p. 5266 ff.

<sup>10</sup> RGBl., p. 1271.

<sup>11</sup> P. 5285 A. of Ver. Sten. Ber., Vol. 352.

<sup>12</sup> See the Verhandlungen, Sten. Ber., Vol. 352, p. 5291. For the text of the motions, see Anlagen, 1921, Nos. 2735, 2738, 2740. For the report of the committee asking the Reichstag to reject the motions, see Anlagen, No. 2986.

<sup>13</sup> See RGBl. 1921, p. 1664.

<sup>14</sup> Verhandlungen des RT., Sten. Ber., 91 Sitzung; Bd. 349, p. 3333. For motion to revoke, see Anlagen, No. 1828; for motion to amend, Anlagen No. 1849; for the President's ordinance, see RGBl. 1921, p. 371.

<sup>15</sup> The 91st, the 92nd, and the 99th. See Ver. Sten. Ber., pp. 3333 ff., 3350 ff., 3497 ff.

lost and the second referred to a committee. The report of the committee was favorable, but suggested several changes in the motion, which made it more specific and improved it technically as a legislative act. With these changes, the reporter of the committee moved the adoption of the motion. An interesting alteration in the language should be noted. The motion as originally presented described its purpose as follows:<sup>16</sup>

"To petition the national Cabinet to amend at once the ordinance concerning the establishment of extraordinary courts . . . in the following particulars."

The committee's report, however, expresses the purpose somewhat differently:

"To petition the national Cabinet to cause the following amendments to be made to the aforesaid ordinance."

The motion was passed as changed by the committee.

While the report of the committee shows its recognition of the fact that theoretically the Cabinet neither makes nor alters ordinances under Article 48, it also shows that the Cabinet is considered to be in control of the President's acts, or at least in a position to influence them very strongly. The same attitude is shown clearly by the national Minister of Justice and the national Minister of the Interior in their speeches during the discussions; and, in fact, is assumed by everyone who participated in the debate. For example, the Minister of Justice said:

"The ordinance was issued by the national President upon my motion, because the national Ministry of Justice was convinced that without such an ordinance justice could not be properly administered."<sup>17</sup> There appears no question anywhere that the Cabinet can control the exercise of the powers bestowed upon the President by Article 48.

A second most interesting fact is the assumption by all concerned that the Reichstag had the right to request the Cabinet to cause the

<sup>16</sup> For vote on the original motions, see Ver. Sten. Ber., Bd. 349, p. 3570. For the report of the committee, see Anlagen (1921), No. 2018. For the presentation to the RT of the committee's report, and the debate and vote thereon, see Ver. Sten. Ber., Bd. 349, p. 3687 ff.

<sup>17</sup> Ver. Sten. Ber., Bd. 349, p. 3338.

amendment of the ordinance. The language of Article 48 gives the Reichstag only one type of control over the ordinances issued by the President on the basis of the authority bestowed by this article; namely, the right to demand revocation. Nevertheless, despite the theoretical separation of powers, the Reichstag here assumed a right to attempt control by a different method; and this right was nowhere seriously disputed. A few words from the speech of the Minister of Justice tacitly acknowledge this right (as well as the Cabinet's relation to the ordinances issued under Article 48):

"Gentlemen . . . I beg you to make no changes in the ordinance which we have issued."<sup>18</sup>

The most interesting part of this story is its sequel. The motion as amended by the committee was passed on May 12; two days later an ordinance was issued by the President, which made the changes requested by the Reichstag.<sup>19</sup>

It should be noted that this type of control by the Reichstag depends upon the actual working adjustment between legislature and executive at any given time. The story which has just been told might have a different ending if the Cabinet had felt itself able to risk a vote of lack of confidence; and in fact a petition which was made to the Cabinet in May, 1920, by the National Assembly, for the revocation of a dictatorial measure, was not granted.<sup>20</sup>

In concluding this survey of the emergency powers bestowed by Article 48 of the Constitution, the fact should be noted that whereas they were exercised very frequently during the first few years after the Weimar Constitution went into effect, with the return of more normal and settled conditions their use has almost disappeared. While they remain as a weapon of defense in case of riot or insurrection, it is to be expected that the employment of these powers to accomplish ends which are really in their nature subjects for legislative rather than executive action will either

<sup>18</sup> Ver. Sten. Ber., Bd. 349, p. 3341.

<sup>19</sup> RGBI. 1921, p. 689.

<sup>20</sup> See the stenographic reports of the National Assembly, Sessions 177, 179, p. 5713 *et passim*, for this matter.

fall into complete disuse, or will be prohibited by the contemplated regulatory statute.

**Ordinance Powers.** The ordinances<sup>21</sup> issued by the President are of two kinds, namely, administrative and legal. The administrative ordinances are such as affect only the public authorities over which the President has some degree of control, or such as carry out the functions legally bestowed upon him, without affecting a member of the public as a third party, or directly touching the citizen. The right to issue such ordinances is conceded to be a part of the function itself, and to require no special authorization. The bestowal of any function upon the President automatically gives him the right to issue such ordinances, always subject to ministerial countersignature.

Legal ordinances have the effect and force of law; they directly affect the rights of individuals, or lay obligations upon citizens, which the courts will enforce. Such ordinances cannot be issued except by virtue of special legal authorization. The German President derives the authorization to issue legal ordinances from three sources: the Constitution; old statutes still in effect which give such power to the Kaiser; statutes issued since the adoption of the present Constitution.

Under the Constitution, the President may issue legal ordinances in exercising the emergency powers bestowed by Article 48. The Article does not specifically bestow this right, but the courts have held that the words "necessary measures" include the issuing of ordinances having the force of law.<sup>22</sup>

The Transition Law of March 4, 1919, transfers to the national President the powers bestowed upon the Kaiser by previous national laws still in effect; Article 179 of the new Constitution gives such powers to the President elected under this document. Any right to issue legal ordinances which may be conferred by these laws is of course included.

Since the adoption of the new Constitution, certain laws have bestowed upon the President the right to issue legal ordinances.

<sup>21</sup> For a discussion of the place of the ordinance in German public law and administration, see Chapter XIX.

<sup>22</sup> See *Entscheidungen des Reichsgerichts*, St., Bd. 55, p. 115; Bd. 56, p. 163, p. 420.

Thus, the competence bestowed by Section 11 of the National Defense Law "to issue military orders" is understood to include orders which affect civilians, that is, "not only executory legal ordinances, but also legal ordinances establishing law."<sup>23</sup> The law concerning the national railways gives the President the right to issue orders of expropriation in individual cases, by means of ordinances countersigned by the Minister of Commerce.<sup>24</sup> These ordinances are legal rather than administrative, as they affect the property rights of private citizens.

As has been seen, the ordinances issued by the President are subject to numerous controls exercised by the Cabinet, the Reichstag, and, to a certain extent, by the courts of the land.

**Summary and Conclusions.** One of the weightiest problems of the modern state is that of granting to its executive authority sufficiently broad powers for the proper administration of all the functions bestowed upon such authority, and yet of controlling the exercise of these powers so that they may not be employed in an arbitrary, irresponsible, or inefficient manner. When the chief executive is selected by the legislature and may be overthrown by it, the question of control is relatively simple; but great difficulties may arise when the chief executive is chosen by the people and is made practically independent of the legislature. The experience of the United States with popularly elected chief executives—national, state, and municipal—over whom the legislature has no effective control, has shown that the control of the political party, the hope of reelection and the fear of impeachment, are insufficient guarantees of proper fulfilment of duty. These controls do not operate continuously, but sporadically, the party for its own interests commonly refrains from unfavorable criticism of a member once in office, and even attempts to conceal his faults of administration, and to assist in his reelection if this seems advisable for party reasons. The people do not watch the executive closely, and do not possess the political and administrative training needed to judge his acts correctly under ordinary circumstances; hence

<sup>23</sup> For law, see RGBL 1921, pp. 329, 787, 960. For reprint with amendments, see von Bieberstein, *Verfassungsrechtliche Reichsgesetze*, 1924, p. 579 ff. For comment, Poetzsch, *Vom Staatsleben*, etc., p. 160.

<sup>24</sup> RGBL 1924, No. 278, Section 38.

when the question of reelection arises they are likely to follow the lead of their own parties. Impeachment is a last resort, practically never employed except for flagrant misfeasance and malfeasance. This lack of a real and continuous control means that the elected executive may, and too often does, fall far below the standards of efficient administration.

When it was decided by the framers of the Weimar Constitution that the German President should be elected by the people, the question of controls was given the most serious consideration. The element in the National Assembly which desired to follow the model of the United States was finally compelled to yield to the element which stood for an effective control over the President's acts. The President was given vast powers in respect to foreign affairs, the organization of the national governmental departments, the command of the army and navy, the power of pardon, the power of federal execution, and the maintenance of public safety and order; but at the same time the use of these powers was so safeguarded by relationships and controls that no act can be performed in an irresponsible manner.

While extremely broad and important executive powers are given to the President, he cannot exercise them alone, but must always have the cooperation of the national Cabinet, expressed by the fact that some member of the Cabinet countersigns every act. The result of this arrangement is, that the President can take no significant step except under the virtual control of the Cabinet, which in turn is directly responsible to the other great popularly elected organ, the Reichstag. In this way the Reichstag exercises an ultimate control over the acts of the President, without the necessity of attempting the direct interference with executive functions by way of legislation, that is so frequently and so disastrously the practice of legislative bodies which have no other method of controlling the executive.

But the control of the Reichstag, as an agent of the people, does not preclude a certain measure of control by the people themselves, since special constitutional means are provided to this end. Thus, in a situation where the President and the Cabinet are unable to agree with the Reichstag, the President may threaten to dissolve the Reichstag or may actually dissolve it. By dissolution, the re-



sponsibility is laid upon the people of deciding to send back to the Reichstag persons who support or oppose, as the case may be, the policies advocated by the President.

On the other hand, the Reichstag can make impossible coöperation of the President with a Cabinet which is not in harmony with the Reichstag, in that it can compel the Cabinet to retire through a vote of lack of confidence. By refusing confidence to any Cabinet whatsoever, the Reichstag might even make it impossible for the President to exercise any executive powers, since his decrees have no validity without countersignature. In such a case the President must either retire or appeal to the people through a dissolution of the Reichstag, unless the Reichstag first asks for a popular referendum upon the "recall" of the President. It is hardly necessary to point out the fact that any form of direct popular control over the President is much less effective from the administrative standpoint than the controls growing out of his relationship to the Cabinet and the Reichstag, since popular control does not require a high standard of daily performance, but merely serves to cut a Gordian knot now and again.

Germany, then, has attempted a solution to the problem of control over a popularly elected chief executive, by adding to the usually ineffective controls of party relationships, hope of reëlection, and fear of impeachment, a direct control over the President's acts by the Cabinet, an indirect control by the Reichstag, and an ultimate emergency control by the people. The few years during which the new Constitution has been in operation will not permit a final judgment as to the efficacy or sufficiency of such controls, but the general experience of parliamentary governments would seem to indicate that they represent a definite improvement over the almost irresponsible situation of the executive in the United States.

The principle of separation of powers is nominally preserved in the German Constitution through the independent and separate election of the President, and the bestowal of his chief functions by the Constitution itself rather than by the legislature. For working purposes, however, this separation, which has had so many undesirable consequences in the United States, is overcome by the requirement of ministerial countersignature to acts of the President. Thus the parliamentary principle is enforced, that the execu-

tive branch of the government must be responsible to the legislature for every act, while at the same time the President preserves a certain personal and official independence of status. The exact interrelationships of President, Cabinet, and Reichstag will of course vary from time to time. It is evident that the balance of power here is a shifting one, depending upon a great variety of circumstances, such as the popularity and personal force of the President, the strength of the Cabinet and of its individual members, the political and party situation in the Reichstag, the development of customs, and the attitude of the people.

A point which deserves particular attention is the fact that the organization of the administrative departments in the Reich is planned by the President, under the control of the Cabinet, rather than by the legislature. This tends to make the administration flexible, makes possible adjustments to meet changing circumstances, integrates administrative organization with budgetary planning, and saves the time of the legislature. Moreover, it places upon the executive branch of government the responsibility for administrative organization. Since the Cabinet directly and the President indirectly are under the control of the legislature, they may be held responsible in case the administration is not organized properly for the performance of its tasks.

The powers of appointment in respect to public officers which are bestowed upon the German President are exercised to a considerable extent by other persons, as is virtually the case in the United States. These persons in Germany are members of the Cabinet or other administrative officers, to whom the delegation of authority is made in due form; so that the appointing power remains a function of the administration, which can be held responsible for its exercise. In the United States, on the contrary, the custom of making federal appointments upon the nomination of Senators and Representatives has virtually transferred much of the President's power of appointment to members of the legislature, who exercise it under no responsibility, usually for their own political advancement, and with results that can best be described as disastrous to sound administration.

The broad constitutional powers of the Reich in respect to the states necessitate a bestowal upon the executive of methods by

which these powers may be enforced. Some way must be provided of compelling the state to submit to the legislative and normative authority of the Reich, of holding the state within the boundaries of its constitutional competence, and of forcing it to perform the functions laid upon it by the national Constitution and national laws. While in most instances, the question whether the state is or is not acting in accordance with its duties, is settled by the courts, to whose decision the state ordinarily submits, yet methods are provided by which the national President can enforce the decisions of the courts against a recalcitrant state (acting here as an executory officer), can independently force the state to do its duties, or can cause such duties to be performed at the expense of the state. These methods are varied in nature, and range from simple requests and informal negotiations to an extreme measure, namely, the use of military force against a state. This power was used during the troubled days in Germany immediately after the war to prevent changing the form of state government, to put down insurrections that the state either could not or would not quell, and to insure that the functions of state government were carried out properly. Since the failure of a state to do its duty as a rule involves danger to public safety and order, the President has hitherto elected in all cases of federal execution to exercise the emergency or dictatorial power as well as the power to compel performance. This fact, however, should not be interpreted to mean that federal execution and the use of the emergency power are inseparable.

Furthermore, it must be remembered that even the threat of federal execution may be, and, as official correspondence and other records show, has been, efficacious in holding a state to the performance of its constitutional duties in respect to the Reich.

The most striking authority of the German President is undoubtedly the so-called dictatorial power, or the power to take measures to preserve or restore public safety and order. This power furnishes a method for dealing with exceptional situations in a very vigorous and almost summary way, without the necessity of violating the Constitution, and always under the control of the representatives of the people. There can be little doubt that times of war or grave insurrection require the use of vigorous measures, and that such measures should be exercised always by responsible

authorities rather than by unofficial and irresponsible self-constituted agencies. Undoubtedly it may be much better, under grave necessity, to set aside certain fundamental rights temporarily, in order that the government may be able to restore as quickly as possible the conditions of peace and safety necessary for the actual operation of such rights, than to tie the hands of the authorities in such a way that no real liberty and security exist. This is particularly true, if adequate courts are given jurisdiction, or the proper kind of appeals are allowed, so that the citizen is never subjected to the irresponsible use of uncontrolled power. The principle involved in the institution of the dictatorial power of the German President, then, may be regarded as correct; but the unforeseen use of this power to impose economic measures upon the nation, and otherwise to define danger to safety and order in ways which have caused much unfavorable comment, indicates the need of certain limitations upon this principle. During the unsettled conditions directly after the war a considerable reluctance was expressed toward laying any limitations upon the President in the use of this power; but with the return of more normal times there has been a somewhat insistent demand that the legislature adopt a law defining more closely the powers of the President, making more certain the relationship of the state to the nation in the use of the dictatorial power, establishing standards and forms of procedure, and guaranteeing more adequate legal remedies to the individual.

The extensive use of the dictatorial power, and the very radical ways in which it was used during the first few years of the German Republic, have practically passed out of existence with the restoration of stable conditions. In this sense the exercise of dictatorial authority may almost be said to stand in inverse ratio to the general welfare. There can be little doubt, however, that its frequent use was of material assistance to Germany in conquering its various disorders, political, social, and economic, and emerging from floods of disaster as a unified self-governing nation.

## CHAPTER V

### THE NATIONAL CABINET

No written fundamental law governs the formation or the activities of the British Cabinet. The constitutional laws of France include only a few vague provisions concerning the Cabinet; the Constitution of the United States makes no direct mention of such a body and contains merely an incidental reference to heads of departments. In contrast to these older constitutions, that of Germany contains more than a score of articles<sup>1</sup> referring to the national Cabinet and establishing its composition, the selection of its members, its relationships to the Reichstag and Reichsrat, its principal functions, and various other matters. Needless to say, laws, ordinances, and usage supplement the constitutional provisions to a very considerable extent.

According to Article 52, the Cabinet consists of the national Chancellor and the national Ministers. The Ministers, whose number is not prescribed in the Constitution, are either the heads of the great government departments or Ministers without portfolio.<sup>2</sup> All Ministers have seats and votes in the Cabinet. It is not necessary that they be members of the Reichstag. Since membership in the Cabinet is limited to the Chancellor and the Ministers, obviously the President is not a member of the Cabinet. However, his representative regularly participates in its sittings, and in practice he is often present in person, despite the confidential nature of Cabinet meetings.<sup>3</sup>

The President appoints the Chancellor,<sup>4</sup> and upon the recommendation of the latter, the national Ministers. It was evidently

<sup>1</sup> Constitution, Articles 33, 35, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 64, 65, 56, 67, 68, 69, 74, 77, 86, 88, 91, 93, 98.

<sup>2</sup> Stier-Somlo, *Deutsches Reichs- und Landesstaatsrecht*, Vol. I, p. 624; Decree of National Pres. 1919 (RGBl. 327).

<sup>3</sup> See Stier-Somlo, Vol. I, pp. 621, 624; also *Geschäftsordnung der Reichsregierung*, R Min Bl. 1924, pp. 173, 236, secs. 29, 30.

<sup>4</sup> Article 53.

the intention of the framers of the Constitution to give the President considerable independence in the selection of the Chancellor. This right was felt to place him in the position to act as a counter-balance to the almost supreme power of the Reichstag.<sup>5</sup> There was much discussion in the constitutional convention over the question whether the Chancellor or the President should appoint the Ministers. Dr. Heinze argued that unless the President were given a free hand in the matter, political factions would practically dominate the choice.<sup>6</sup> In the end the prevalent opinion was the opposing one of Delbrück, who argued that since the Chancellor is responsible for the general lines of policy, he should, prior to the formation of a new ministry, have an understanding with the individual members as to their willingness to work under him and in accordance with his policies. Delbrück also held that it was to be expected, that when a complete change took place in the Cabinet the President would have a full understanding with the Chancellor, concerning future policies.<sup>6</sup>

In actual practice, neither does the President have a free hand in the selection of the Chancellor, nor does the Chancellor have a free hand in the choice of the Ministers whom he is to nominate for appointment. The chief reason for this is the fact that the numerous political parties in Germany are all represented in the Reichstag on the basis of proportional representation, and that since the adoption of the Constitution no one party has ever secured a parliamentary majority enabling it to control the government alone. All Cabinets have depended for support upon party coalitions. Consequently their formation is in very large part a matter of bargaining. As a rule, before a Cabinet is formed negotiations take place between the leaders of the various parties which are expected to support it, and between the President and the party leaders. In these negotiations the general lines of policy are laid down to which the different groups forming the Cabinet will agree, pledges are made to "vote for the order of the day and the motions of a specified Cabinet," and the details of organization are worked out. Agreements are made as to how many seats, and which seats, the individual parties shall control; which party is

<sup>5</sup> Poetzsch, *Handausgabe der Reichsverfassung*, Zweite Auf., p. 106.

<sup>6</sup> *Verhandlungen*, Vol. 327, p. 1339.

to have the Chancellor ; whether other parties than those in control have any claim to positions ; what persons from various parties are acceptable to the others.<sup>7</sup>

Nothing could better illustrate this fact of party control in the selection of both the Chancellor and the Ministers than three letters, which are so significant as to deserve being quoted in full. The first is a communication to the President from the leader of an important political party, the second is a reply to it by the President, and the third is a letter from Dr. Cuno to the President explaining his inability to form a cabinet.

MY DEAR MR. PRESIDENT: After the retirement of the Cabinet of Stresemann, parliamentary usage would have required, that one of the opposition parties should be entrusted with the formation of a Cabinet. This has not happened. On the contrary, Mr. President, you have made attempts to reestablish a national Cabinet in absolutely different directions ; but these have failed. Meanwhile both the foreign political situation of the Reich, and the mental and economic distress of the German people, have become so severe, that further delay in establishing a new Cabinet cannot be defended. The great majority of the German people is awaiting a departure from the governmental method hitherto in effect, and a new orientation towards the right. If the Reichstag, with its too old composition, is not competent to give expression to this desire of the people, you, Mr. President, should appeal to the decision of the people, and bestow upon the new Cabinet, about to be established, the authorization for the dissolution of the Reichstag. For the establishment of a Cabinet under such circumstances, we place ourselves at your disposal. . . .

HERGT,

*Chairman of the German National People's Party.*

In reply to this letter the President said :

YOUR EXCELLENCY: In reply to your letter of today, I must first call to your attention the fact that the national Constitution leaves the appointment of the man who is to establish and direct the national Cabinet, to my free decision. In the exercise of this right belonging constitutionally to me, I have hitherto always entrusted a person with the formation of a new Cabinet, whose political position appeared to offer the greatest prospect for the rapid assembling of a Cabinet capable of working together ; I am

<sup>7</sup> Glum, Die Staatsrechtliche Stellung der Reichsregierung, etc., p. 29 et passim.

also following this method in the present crisis. If, therefore, I have declined to entrust one of the two parties of the opposition with the establishment of a Cabinet, this has come about because I was compelled to the conclusion through my confidential discussion with the leaders of the Reichstag factions on the evening of the 23rd of this month, that for neither of the two opposition parties was there a present possibility of establishing a Cabinet upon constitutional foundations. I had gained the impression also from the conversation with your Excellency on Friday evening, that the faction of the German National People's Party laid no decisive value upon leadership in the establishment of the Cabinet; but on the contrary that it had agreed to accept the chancellorship of a member of the German People's Party or of the Center. Moreover, may I expressly point out that I had agreed with Representative von Kardorff, who has been proposed to me by party leaders of the German People's Party, the Center and the Democrats, for the formation of a Cabinet, that the German National People's Party should be offered two important offices to be filled by men having their confidence. The conception, that each delay in the establishment of a Cabinet injures the interests of the Reich, I thoroughly share. Although I have failed in my endeavor to call together a non-partisan Cabinet, that should be supported by all citizen's parties, I have done everything in my power to accelerate the negotiations toward an understanding of the citizens' parties, which have been carried on in the Reichstag. These negotiations, as you know, have fallen through; therefore I have this afternoon entrusted Herr Marx . . . with the formation of a Cabinet which will be supported by the middle parties. . . .

EBERT, *Reichspräsident*.<sup>8</sup>

The political difficulties of forming a cabinet are also shown in a letter from Dr. Cuno to the President, written on November 18, 1922, after the miscarriage of his first attempt to constitute a cabinet. This letter reads as follows:

MR. PRESIDENT: You gave me the mandate for the formation of the national Cabinet, after your personal contacts with the party leaders had shown that all the parties of the workers' associations and the Social Democrats stand upon the ground of the note sent to the Reparations Commission on the 13th of the month, and look to me to establish a new Cabinet. In view of this I accepted the proposal, with the idea of forming a Cabinet of labor which should reflect in its composition the necessity of an expert direction

<sup>8</sup>Quoted from Poetzsch, *Vom Staatsleben unter der Weimarer Verfassung*, in *Jahrbuch des Öffentlichen Rechts der Gegenwart*, 1925, pp. 163-64. These letters were exchanged late in November, 1923.



of business and should enjoy the confidence of the Reichstag. The results of the conferences with the party leaders which were necessary to this end have been, that individual parties have not only brought forward suggestions and wishes, but proposals and claims regarding the number of Cabinet members to be appointed from one party, their persons, their positions; the question has even been raised whether a member of the former Cabinet should undertake another department. Therefore the conditions do not exist under which a Cabinet acceptable to real labor can be formed. The less I mistake the necessity for a guarantee of coöperation between Parliament and the Cabinet through the composition of the latter, the more decisive emphasis I must place upon the point that the selection of members and departments should be left to the judgment of the person who is chosen to form the Cabinet. Since this is not the case at present, I beg to be permitted to give back the commission for the formation of a Cabinet into your hands.<sup>9</sup>

These letters show (despite President Ebert's opening sentence) that the President is not actually as free in his choice of the Chancellor as might seem to be the case in view of his constitutional powers, but must necessarily be guided by the party situation. Since all Reichstag majorities are coalitions, a Chancellor acceptable to the various factions can be secured only if the President first discusses the question of the Chancellorship with the party leaders. President Ebert's letter indicates also that the leader or the representative of one of the greater parties will not necessarily be chosen for the Chancellorship, but that the person will be selected who can most readily assemble from the different political factions a group capable of working together. This may almost be called a working principle.<sup>10</sup> Because of the multiplicity of parties forming the membership of the Reichstag, no one party has ever had a majority, and it is therefore impossible for Germany, in practice, to adopt the English system of entrusting the premiership to the leading man in the leading political party.

<sup>9</sup> *Ibid.*, p. 163.

<sup>10</sup> *Ibid.*, p. 164. Brunet says (The new German Constitution, p. 179): "Thus the Cabinet is constituted not by an act, a free decision of the President, but by an agreement reached by the parties." Dr. Glum (p. 29) says: "In the construction of most national Cabinets that we have hitherto had under authority of the new national Constitution, the parties or factions have turned the scale, not the national President or the national Chancellor, as one might have assumed in view of the national Constitution. As a rule, before the formation of a Cabinet the factions have arrived at an agreement."

An inevitable result of the present party situation is the establishment of coalition Cabinets. More than a dozen different Cabinets have existed in Germany since the national Constitution went into effect, and all have been composed of members of three or four different parties.<sup>11</sup> The reactions of this fact upon the formation of the Cabinet are clearly shown in the letters quoted above.

**Relationship to the President.** The relationships of President and Cabinet include both coöperation and a reciprocal balance and control of powers. The basis of these relationships is laid in the Constitution, but their actual development and operation are controlled largely by complex personal, political, and social forces, and vary from time to time as these forces change. Important factors include the appointment and dismissal of the Cabinet or its members by the President, the countersignature of presidential acts by members of the Cabinet, presidential participation in the Cabinet's order of business and in its meetings, the delegation of presidential powers to members of the Cabinet, and many other arrangements which will appear in the course of discussion.

In the ordinary business or governmental organization the power to appoint and dismiss officers constitutes the most fundamental type of control over them, since the usual corollary to this right is the right to plan and govern their activities, to give specific assignments, to express approval, disagreement, or dissatisfaction with the manner in which activities are carried on, to demand improvements, and to hold individuals responsible for accomplishment. These rights belong to the President of the United States in respect to the Secretaries who constitute his so-called Cabinet. The power of the German President to appoint and dismiss the Chancellor and upon his nomination, the Ministers, does not, however, carry with it the right to exercise such controls. This is due to several constitutional and extra-constitutional factors. The first of these is the fact that the Cabinet is not the creation of the President or even of ordinary laws, but is established in the Constitution itself with its position well defined. It is in no sense a subordinate authority to the President, as is the Cabinet of the United States,

<sup>11</sup> Poetzsch, *Jahrbuch*, 1925, pp. 165-68; also *Handbuch für das deutsche Reich*, 1926, pp. 23 and 57 ff.

but is a coördinate authority. Another contrast with the United States is the matter of confidence. In this country members of the Cabinet must have the confidence of the President alone in order to retain their offices, and the confidence of Congress or of either house thereof is not required. In Germany the situation is practically reversed, since according to Article 54 of the national Constitution: "The national Chancellor and the national Ministers require for the administration of their offices the confidence of the Reichstag. Each of them must resign if the Reichstag by a formal resolution withdraws its confidence."

The President's direct power over the Cabinet is weakened, also, by the fact that not he but the Chancellor is responsible for the chief lines of policy. Though undoubtedly the President may to a certain extent control policy, in that he may appoint a person to the chancellorship who agrees with his policy, or is willing to subordinate his own policy to that of the President,<sup>12</sup> this is possible only under special conditions, when the party situation, the policies at stake, and the personalities of the President, the Chancellor, and the prospective Ministers, are such as to enable a working agreement to be brought about. There is of course no method whereby the President can compel the Chancellor to keep such an agreement if he feels impelled by changing circumstances to depart from it and is strongly supported by the Reichstag in doing so. Dismissal under these conditions would be merely futile, for reasons that will be given shortly.

The Ministers are not, like the Cabinet members in the United States, responsible to the President for the conduct of their departments. Their responsibility is to the Cabinet as a whole insofar as their departmental affairs involve Cabinet action, to the Chancellor insofar as an affair concerns general lines of policy, and to the Reichstag generally.<sup>13</sup>

Although the President has the right to dismiss the Chancellor and upon his suggestion, the Ministers, it would seem to be nearly

<sup>12</sup> For an example of certain control over the Chancellor, see a letter of President Hindenberg to Dr. Marx of January 20, 1927, requesting him to form a cabinet along certain lines and to undertake certain policies. Quoted by Dr. Giese in *Deutsche Juristen-Zeitung*, 1927, p. 275. Dr. Giese discusses the constitutionality of these stipulations, and decides that the President may exercise such power.

<sup>13</sup> See *Geschäftsordnung der Reichsregierung*, Section 15; Anschütz, *Die Verfassung des Deutschen Reichs*, p. 189.

impossible for him to do so merely because of failure on their part to carry out his policies or obey his wishes. If they still held the confidence of the Reichstag, such a step would be throwing down the gage of battle to that body, which could refuse confidence to any other persons in order to procure the reappointment of those deposed. Moreover, countersignature would seem to be necessary for any dismissal.<sup>14</sup> In exercising his right of dismissal, therefore, the President must take into consideration not only the policies and the political composition of the Reichstag, but also its attitude toward the Chancellor and the other members of the Cabinet.<sup>15</sup>

The result of the fact that the Chancellor or some Minister must countersign every presidential act is at the same time a relationship of coöperation and one of control. The weighty and significant powers given to the President are not exercised by him alone, but only with the very real coöperation of the Cabinet. In a certain sense the Ministers act as the chief advisors to the President, especially since they must assume responsibility for presidential action. They not only discuss with him such matters as he brings forward, but they approach him with proposals and suggestions.

On the other hand, the Cabinet acts as an organ of control over the President, in that the latter can perform no official act without countersignature. In actual practice most of the President's acts are drawn up by some Minister or by the Cabinet, and are signed by the President as a matter of form. The vast powers nominally belonging to the President, in particular the function of federal execution and the emergency or "dictatorial" powers bestowed by Article 48, are virtually exercised by the Cabinet, subject to the right of the Reichstag to demand the revocation of any act based upon them.

Through the countersignature, moreover, the Reichstag secures an indirect but continuous control over the President, since the Ministers who assume responsibility for presidential acts must answer to the Reichstag, and would refuse to coöperate with the

<sup>14</sup> On this point see Würmeling, *Archiv des Öffentlichen Rechts*, 1926, N. F. II, p. 378.

<sup>15</sup> Freytagh-Loringhoven, *Die Weimarer Verfassung in Lehre und Wirklichkeit*, p. 165, says that practically a Minister can be dismissed only when his party refuses to support him longer.

President if he should attempt to exercise his powers in ways of which they did not approve and which they believed to be opposed to the policy of the Reichstag.

The assumption of responsibility for presidential acts by the Cabinet has a yet more far reaching significance. A situation may arise in which certain policies are supported by the President and the Cabinet, but rejected by the Reichstag. In this case the President has a means of bringing before the people the policies which he favors, and for which the Cabinet has assumed responsibility. In order to gain the support of the legislative body for the policies for which he and the Cabinet contend, he may threaten to dissolve the Reichstag or may actually dissolve it. In this way he and the Cabinet may bring large questions of public policy directly before the people for decision.

Article 55 of the Constitution provides that the rules of business procedure shall be drawn up by the Cabinet and approved by the President. The necessity of such approval gives to the President theoretically a certain slight control over the Cabinet, since he may insist on various privileges in respect to Cabinet meetings and actions, as a prerequisite to approval. The rules of order<sup>27</sup> now in force provide that the director of the Presidential Bureau may regularly participate in Cabinet meetings, that the President is to be kept currently informed as to the policy of the Chancellor and the conduct of the various departments, and that he may demand the personal attendance of Cabinet members.<sup>28</sup> As a matter of actual practice, the last-named right is frequently extended to the calling together of the entire Cabinet by the President, when momentous questions are to be considered. Although the President cannot vote in the Cabinet meetings at which he is present, nevertheless he is able under such circumstances to make a forceful presentation of his views on important issues, not merely to Ministers individually but to the Ministers in their collegial capacity. Since the President is in command of all essential information, since his position is in certain respects independent, and he is not confined, as are the Ministers, to details of admin-

<sup>27</sup> Geschäftsordnung der Reichsregierung, Reichsministerialblatt, 1924, pp. 173, 236, as amended, RMinBl. 1926, p. 119. See Brecht, Die Geschäftsordnung der Reichsministerien.

<sup>28</sup> *Ibid.*, Sections 4, 30.

istration and work in connection with the Reichstag, he may well be able at times to present a broader, more unified, and less partisan point of view than the individual members of the Cabinet hold. The extent to which the President may influence Cabinet action of course depends almost entirely upon his personality and the use which he makes of his opportunities.

An interesting order issued by the Minister of the Interior in 1923 gives to the President a considerable scope of influence over the activities of the most important department of internal administration. This order reads as follows:<sup>19</sup>

The position of the national President as representative of the German Reich entails in addition to the rights expressly bestowed upon him by the Constitution, the possession of significant functions in various fields of public life. Although the preparations for the fulfilment of the legal and representative duties of the national President belong largely to the highest national authorities, yet in all cases the opinion of the national President must be obtained at the proper time.

I therefore provide, that in all affairs, in which fundamentally or politically important decrees and statements or representative functions of the national President are concerned, before a statement or communication is given out it is to be reported to the national President through his Bureau, and his decision is to be awaited.

The principle here established opens the way for the President to exert a very real influence upon the conduct of administration, although it gives him no legal control. How much or how little influence he will have, depends upon the personal and political situation at any given time.

Authorities upon German public law agree that the President has no general power to issue instructions and assignments to Ministers, and to maintain a supervision over them,<sup>20</sup> since within the main lines of policy fixed by the Chancellor each Minister manages his own department independently under his personal responsibility to the Reichstag. There is, however, some disagreement as to whether the President may issue such instructions in regard to functions which are bestowed primarily upon himself but which he has delegated to Ministers. Perhaps the best example

<sup>19</sup> Reichsministerialblatt, 1923, Order of July 3.

<sup>20</sup> Hubrich, *Das Demokratische Verfassungsrecht des deutschen Reiches* (1921), p. 114; Würmeling, p. 389; Article 56.

of this is the assignment by the President to the Minister of War<sup>21</sup> of the powers of command belonging first to himself as commander-in-chief of the armed forces, reserving, however, the right to give direct orders. Section 8 of the law governing the armed forces provides that the national President is the highest commander of the entire armed forces, and that under him the national Minister of War exercises the power of command. Section 11 of the same law provides that the right of issuing military decrees is to be exercised by the President. Hubrich<sup>22</sup> interprets these provisions as meaning that the President possesses the right of issuing instructions to the Minister of War, but this is denied by Würmeling on the ground that the Minister of War actually exercises the immediate command not "under the national President," but with him. Poetzsch assumes that the President will issue orders to the Minister of War, and remarks that if the latter refuses to countersign them, the Chancellor may do so.<sup>23</sup>

In general, however, it may be said that the President has no power of command or of supervision in respect to the individual Ministers or the Cabinet as a whole. "The entire relationship between these factors must be governed by political and personal tactfulness and must rest upon reciprocal consideration. The national President is not the superior in the sense that he can command the national Chancellor and Ministers according to his caprice, since the national Chancellor and Ministers are politically responsible and act not upon command, but according to their political convictions and upon the ground of their political responsibility. But in so far as these limitations do not prevent, one must permit to the national President an honorary precedence."<sup>24</sup>

Article 51 of the Constitution provides that in case of disability of the President, the Chancellor acts in the first instance as his substitute, but if the disability seems likely to be prolonged, a substitute is to be appointed by national law. This provision is not understood to mean that the Chancellor must obey the President under such conditions, or that he has the political and personal

<sup>21</sup> See Articles 47, 50; Law Governing the Armed Forces, RGBL. 1921, pp. 329, 787; President's decree of August 20, 1919 (RGBL. p. 1475).

<sup>22</sup> *Op. cit.*, p. 114.

<sup>23</sup> Würmeling, p. 389; Poetzsch, p. 137.

<sup>24</sup> Hubrich, p. 119.

status of the President and ceases to be responsible to the Reichstag. He is still responsible as the national Chancellor. While it is possible for another minister to assume the coresponsibility for his actions in this capacity by countersignature, it is not essential. During the time of the incapacity, the President cannot himself exercise authority, since it is impossible for the same powers to be exercised at the same time by two persons.<sup>25</sup> It should be observed that the representation of the Chancellor is only intended as a temporary measure.

Since it is possible that the Chancellor will be in some degree of sympathy with the President and his policies, and certain that he must possess the confidence of the Reichstag, there is no particular danger from such an arrangement, far less in fact than may occur in the United States if a Vice President chosen merely for the sake of party expediency assumes the presidential chair for the unfinished term of the President. The danger in the former case lies in the replacing of the fixed, and to a certain extent non-partisan, element of the government by the Chancellor, whose position is based largely upon partisan policies; yet it is easy to remedy this by the choice of another substitute for the President. The danger in the latter case lies in the automatic and irremediable passing of vast powers into the hands of a man who may have no statesmanlike qualities whatever, but who was chosen as Vice President because of his power to control votes in "doubtful" states. It is significant of the German attitude that for the rather brief interim between the death of Ebert and the election of a new President, the Reichstag chose to appoint the president of the Reichsgericht as temporary President, rather than to allow the Chancellor to occupy the office during this period.<sup>26</sup>

In summarizing the relationship between the President and the Cabinet, von Freytagh-Loringhoven says: "The result of all this is, that relations between President and Cabinet are less legal than pragmatic in nature, and express themselves according to political factors, and the weight of the personalities concerned."<sup>27</sup>

<sup>25</sup> Grau, pp. 136-38.

<sup>26</sup> Gesetz über die Stellvertretung des Reichspräsidenten of March 10, 1925. RGBl. I, p. 17. It is interesting to note that President Ebert died on February 28, 1925, and that this law providing for his substitute went into effect a few days later.

<sup>27</sup> Die Weimarer Verfassung in Lehre und Wirklichkeit, p. 168.



**Relationship to the Reichstag.** The relationship of the Cabinet to the legislative body in Germany is not the result of a slow development, but was established in the Constitution of 1919 on a basis quite different from anything to be found in the older Constitution.

The first thing that should be observed in respect to this relationship is the fact that it is not, as in England, an organic one, since it is not necessary that the members of the Cabinet be either members of the leading party or members of the Reichstag. Dr. Heinze discussed this point in the constitutional convention, as follows:

The parliamentary system does not demand that the Ministers be selected from the majority party; it only demands that the Ministry enjoy the trust of Parliament and must retire when Parliament withdraws that trust. The parliamentary system, furthermore, does not necessarily require the selection of Ministers from Parliament, but permits expert Ministers, who have the confidence of Parliament. I believe that we absolutely require for the upbuilding of Germany, men at the head of the Ministry who can rule matters, who are expert in the highest sense.<sup>28</sup>

The multiple party system has strengthened the theory that the members of the Cabinet do not have to belong to the leading party, since there has never been a party with sufficient power in the Reichstag to control the government alone. As has been said above, every Cabinet so far has been a coalition of members from at least three and sometimes four parties. Though ordinarily the parties will suggest for the Cabinet their most influential members of the Reichstag, at times some disagreement in regard to Cabinet positions has made it necessary to take persons from the outside. Consequently the Cabinet is not composed of the leading men of a great leading political party standing for a definite party program, but of persons whom the various parties find acceptable for the carrying out of a program upon which the factions can agree. The Cabinet is not a committee, so to speak, of the leading party, to be held responsible by the party which is in turn responsible for governing, but only a working group of individuals, each responsible only to his own party and to the Reichstag as a whole. The effects of this intricate relationship will be discussed later.

<sup>28</sup> Verhandlungen, No. 327, p. 1339.

There can be no doubt that it was the intention of the framers of the Constitution to make the Chancellor, and only in a subsidiary way the Ministers, the initiators of public policy and in a sense the leaders of the Reichstag in respect to the formulation and advancement of public policy. Thus, Article 56 of the Constitution provides that the Chancellor shall determine the general course of policy and assume responsibility therefor to the Reichstag. Article 69 provides that bills are to be introduced by the national Cabinet or by members of the Reichstag, and Article 33 provides for the right of the Reichstag to summon the Chancellor or any Minister, and for the right of the Chancellor, the Ministers or their representatives to attend sessions of the Reichstag and of its committees and to be heard even outside the regular order of business.<sup>29</sup>

Although the Constitution makes the Chancellor preëminently responsible for policy, in actual practice this responsibility is largely divided with the other members of the Cabinet. This is due to the fact that members of several parties would not participate in or support a Cabinet, if one man alone, the representative of only one party, could independently formulate policy. Consequently the Chancellor does not have a free hand in defining the main lines of policy. The political program is usually agreed upon to a large extent as a condition precedent to the formation of a ministry, and if subsequent additions, modifications, or changes of policy are necessary they are made by the Chancellor in consultation with the members of the Cabinet. The results of this situation are very interesting. In the first place, the political program of the government is of necessity a compromise between more or less divergent political programs. In the second place, there is an inevitable shifting of the lines of responsibility as laid down by the Constitution, since manifestly the Chancellor cannot assume the same kind of responsibility for policies which are merely agreements between the different parties or between the members of the Cabinet who belong to different parties and the Chancellor, that he might assume if he were the leading figure of a party which actually controlled the majority of seats in the Reichstag. The third result is, that a Cabinet may find it necessary to go out of power not because of an

<sup>29</sup> See Chapter III for further discussion of interpellation and the interplay between Cabinet and Reichstag.

express vote of lack of confidence by the legislature, but simply because one or more members of the Cabinet may not be able to agree to any general line of policy and so may retire. This may lead to the withdrawal of support by the parties to which such members belong, and the Cabinet may find itself in the position of being unable to govern.<sup>30</sup> On the other hand, the party support given to some one individual may be so strong that even dissensions within the Cabinet and considerable opposition in the Reichstag are insufficient to remove him from the Cabinet. The amazing record of Dr. Gessler as Minister of War in Cabinet after Cabinet is the most striking case in point; but several other men, such as Luther, Stresemann, Brauns, and Marx, almost rival this record. Such facts show plainly how little real freedom of choice the Chancellor has, as to either men or policies.

Another factor that undoubtedly prevents the Chancellor from being the one responsible authority for the determination of general lines of policy is the fact that any policy whatever must almost of necessity have a particular bearing upon some individual department. Thus, any foreign policy would necessarily concern the Ministry for Foreign Affairs; any tax policy, the Ministry of Finance; any scheme of social amelioration, the Ministry of the Interior or the Ministry of Labor; any change in judicial procedure or court organization, the Ministry of Justice. Since these departments are particularly interested in such policies, it is almost inevitable that the initiation of policy shall come from them. In particular cases where it may come from the Chancellor, the heads of these departments will at least have to be consulted in respect to it, and will probably be responsible for its detailed formulation and for its presentation and defense before the Reichstag.

That the Cabinet is actually held responsible for the formulation of policy is seen by a study of the proceedings of the Reichstag. This shows that most of the important bills are introduced by the Cabinet as government measures, and relatively few by ordinary members of the legislature. An interesting acceptance of Cabinet leadership is found in the frequent requests by the Reichstag that the Cabinet frame a bill on such or such a subject.<sup>31</sup> The Cabinet

<sup>30</sup> Poetzsch, p. 165.

<sup>31</sup> For examples, see reports of the sessions of the Reichstag, III, 1924-26, Drucksache No. 2821, *passim*; and the reports of any other session.

is of course theoretically under no compulsion to formulate the measure suggested, since it is the authority constitutionally responsible for the formulation of public policy; on the other hand, refusal might lead to a vote of lack of confidence, while acceptance gives the Cabinet a considerable scope for introducing its own point of view, and for making the best of what it may consider a bad situation. Article 73 of the Constitution provides that when one-tenth of the voters request a popular vote on a bill (which must be prepared in complete form as a basis for this petition) the Cabinet must submit the bill to the Reichstag, together with a statement of its own attitude in the matter. If the Reichstag passes the bill without alteration, no popular vote will take place. It is hardly necessary to point out the various possibilities of a Cabinet crisis which these provisions involve.

The direct participation of the Cabinet in legislation, through its power to issue ordinances having the force of law, as well as ordinances governing the processes of administration and the execution of laws, will be discussed later.

**Relationship to the Reichsrat.**<sup>32</sup> The chairmanship of the Reichsrat and of its committees is held by members of the Cabinet. Members of the Cabinet may, and upon request, shall take part in the deliberations of the Reichsrat and of its committees. They have a right to speak at any time during a discussion.<sup>33</sup> These provisions give the Cabinet a considerable influence over the debates in the Reichsrat, an opportunity to explain the current policy of the government, and a close touch with the views of the states as expressed by their representatives. Such presentation of views must in turn affect the ideas and the actions of the Cabinet, particularly in respect to matters which are of especial concern to the states. Motions may be brought before the Reichsrat by either its own members, or the Cabinet.<sup>34</sup> Upon the demand of one-third of the members, the Reichsrat must be convened by the Cabinet at any time.<sup>35</sup>

The necessity of asking the consent of the Reichsrat<sup>36</sup> before introducing a bill into the Reichstag prevents the Cabinet from

<sup>32</sup> See Chapter III.

<sup>33</sup> RV. Article 65.

<sup>34</sup> RV. Article 66.

<sup>35</sup> RV. Article 64.

<sup>36</sup> RV. Article 69.

attempting to secure the passage of laws without at least a previous knowledge of the position of the states in regard to them. When the Cabinet introduces a bill into the Reichstag after the Reichsrat has refused its consent to the introduction, the attitude of the Reichsrat must be stated, so that its side of the question as well as the Cabinet's may be considered by the legislature. Conversely, the Cabinet must introduce a bill upon the motion of the Reichsrat, but it is also to state its own position if it does not agree with the bill.<sup>37</sup>

An interesting example of the importance attached by the Cabinet to the preliminary discussions is found in the provision of its "Joint Order of Business, Special Division," that the committee meetings of the Reichsrat shall be private and their deliberations shall be kept absolutely secret.<sup>38</sup> Many differences can be adjusted in these meetings, many incipient misunderstandings can be cleared up, and compromises can be arranged without any public embarrassment of either party.

The Reichsrat is to be kept currently informed by the Cabinet as to the conduct of national business, and its committees are to be consulted by the Ministers when important subjects are being considered. Ministerial ordinances concerning federal laws which are to be executed by state authorities, and ordinances regulating railways, the post, and other means of communication, or establishing advisory councils for the same, require the consent of the Reichsrat.<sup>39</sup> Various laws give the Reichsrat further power of consent to ordinances.<sup>40</sup> This constitutes a very real line of control over the Cabinet. The Minister of Finance must account annually to the Reichsrat as well as the Reichstag for the administration of the budget of the preceding fiscal year. The Reichsrat examines his accounts and votes upon the question of discharging the Ministry from further responsibility in this matter.

The extensive appointing powers of the Reichsrat might at times affect its relations with the Cabinet, since certain officers, such as members of the High Court of State for impeachments, or even

<sup>37</sup> Article 69.

<sup>38</sup> Paragraph 1. Quoted in Poetzsch, p. 180 ff.

<sup>39</sup> Articles 67, 77, 88, 91, 93, 98.

<sup>40</sup> See *Finanzausgleichgesetz*, RGBI. 1926, p. 203 ff.; No. 6. A glance through any recent volume of the RGBI. will afford numerous other examples.

of the Staatsgerichtshof, may have a considerable influence over the actions and policy of the government. A more likely case, however, is the possibility that the Cabinet and the Reichsrat might disagree as to the appropriate person to fill a vacant office, and that the Reichsrat might be able to force concessions from the Cabinet as the price for appointing the Cabinet's candidate.

**The Position of the Chancellor in the Cabinet.** The Constitution bestows upon the Chancellor a position in the Cabinet which differs from that of the other Ministers in several important respects:

1. He is not chosen as they are.
2. He nominates the other ministers.
3. He has the chairmanship in the Cabinet and the deciding voice in case of a tie.
4. He has the function of establishing the main outlines of policy.<sup>41</sup>

We have already seen the effects of the party situation upon the selection of the Chancellor and upon his choice of Ministers for nomination to the President. The difference between the manner of selecting the Chancellor and that of selecting the other members of the Cabinet is much less under these conditions than it would be under a one-party government, which would give the Chancellor a good deal more freedom of choice among the leading figures of his own party than he has at present. The situation also has an effect upon the Chancellor's relation to the other Cabinet members. The presumption would be, that the nomination of the Ministers by the Chancellor would give him some control over them, particularly since the President is to all intents bound to accept the

<sup>41</sup> The constitutional provisions governing these relationships are as follows:

Art. 53. The national President appoints and dismisses the national Chancellor and, on the latter's recommendation, the national Ministers.

Art. 55. The national Chancellor presides over the Cabinet and directs its business according to rules of order to be drawn up by the national Cabinet and to be approved by the national President.

Art. 56. The national Chancellor establishes the main outlines of policy, for which he is responsible to the Reichstag. Within these outlines every national Minister administers independently the department entrusted to him, for which he is personally responsible to the Reichstag.

Art. 58. The national Cabinet reaches decisions by a majority vote. In case of a tie, the deciding vote is cast by the chairman.

persons suggested by the Chancellor. But several factors prevent this power from having any particular weight. We have already pointed out that the Chancellor does not by any means have a free hand in the choice of the Ministers. The places are settled, as a rule, by agreements between the leaders of the different parties, and the Ministers know that their selection has been made by their party and practically forced upon the Chancellor. In the second place, the members of the Cabinet are not primarily responsible to the Chancellor, but to the Reichstag. The requirement that they be bound by his outlines of policy, and his right to request their dismissal, give the Chancellor an apparent control; but the difficulties that would arise if he should dismiss a Minister who had the support of his party and of the Reichstag reduce this control to a minimum. Third, the Ministers are not removed by the Chancellor, but nominally, at least, by the President,<sup>42</sup> and their removal, like their appointment, depends very largely upon the attitude and the influence of their own parties. Finally, the Chancellor is not, as is the President of the United States, the administrative superior of the members of the Cabinet in the direction of their departments. He is in no sense a director of administration, nor is he even a head of any department, unless he so elects, as several Chancellors have done. His function is much more that of shaping policy and co-ordinating activities than of directing administration.

Nor does the fact that he presides over the Cabinet give him any particular power, since he is only the first among equals except for a few minor privileges, such as that of casting the deciding vote in case of a tie, that of limiting a Cabinet meeting to Ministers, and the like. His superior position in the Cabinet as a whole would seem to result not from his relation to the other members, but from the important powers bestowed upon him.

It is chiefly in the exercise of his function of determining the main outlines of public policy that the Constitution seeks to elevate the Chancellor above the other members of the Cabinet. According to the wording of the Constitution, the Chancellor alone determines

<sup>42</sup> Of course, the Ministers can only be dismissed by the President upon the motion of the Chancellor. See Anschütz, *Die Verfassung des Deutschen Reichs*, note to Article 53, No. 3. See also Redslob, *Le Régime Parlementaire*, p. 281, for the view that the Chancellor's power of dismissal is a real and practicable means of control.

upon the general lines of public policy, within which the Ministers must administer their departments. He is "assigned the position of a statesman, directing and responsible for not only individual affairs but for the totality of affairs."<sup>43</sup> It is apparently the intent of the Constitution to establish the distinction between "governing" and "administering." The Chancellor appears here in the rôle of a great commanding political figure, being the trusted agent, as it were, of the legislature for the determination of policies which involve not only legislation but also the main lines of administration. In this capacity the Chancellor is not contemplated as merely a Minister-President, and a colleague, but a personality superior to the other Ministers. How far practice has departed from this conception, has already been shown. A careful German observer says:

All Cabinet programs have hitherto been discussed and decided by the national Cabinet. But beyond this, details of general policy, which according to the interpretation here presented, are to be settled by the national Chancellor, are also discussed in the Cabinet.<sup>44</sup>

Since so much of the main line of policy is now discussed in the Cabinet as a whole, the question arises as to whether the Chancellor alone is responsible to the Reichstag for it, as the Constitution provides, or whether the whole ministry assumes responsibility for it. The answer to this question presents an apparent contradiction. The Chancellor cannot hide himself in respect to main lines of policy behind a majority decision of the Cabinet; he alone remains responsible.<sup>45</sup> On the other hand, there can be little doubt that the fall of the Chancellor would also involve the fall of the Cabinet, since the main lines of policy are those agreed upon by the factions forming the Cabinet bloc. This is particularly true, since the decision as finally made by the Chancellor is usually the result of Cabinet discussion.

<sup>43</sup> Anschütz, p. 192.

<sup>44</sup> Glum, p. 35. See also Oppenheimer, pp. 104-05. Redslob, on the contrary, says that the situation of the Chancellor does not differ essentially from that which the pre-war Chancellor occupied (*Op. cit.*, p. 282).

<sup>45</sup> Poetzsch, *Handausgabe der Reichsverfassung*, p. 107. "An extension of the competence of the entire Cabinet in respect to Article 57 is not bound up with the responsibility provided for in Article 56."



**The Cabinet as a Unified Body.** The expression "national Cabinet" or "national government" (Reichsregierung) as used in the German Constitution is not used in the same way in all cases. It is rather used in a double sense. At one time it is used to designate the whole national Cabinet, that is, the Chancellor and the Ministers;<sup>46</sup> at other times it is used as a general designation for the appropriate central office or the appropriate national authority.<sup>47</sup>

The German national Cabinet, then, unlike the Cabinet in the United States, is for certain purposes a legal entity, having powers and duties as a body. It is not merely a collective name for the sum of the individual Ministers.<sup>48</sup> While each Minister is independent within the sphere of his own department, and the Chancellor has special functions to perform, the Cabinet as a whole has a particular sphere, independent from the sphere of either the Ministers or the Chancellor. In other words, the entire Ministry in its collective or collegiate capacity is responsible for a limited circle of functions, the Chancellor is responsible for the general lines of policy, and the individual Ministers are responsible for the conduct of their own departments independently.

The authorization for the Cabinet to function in a collegiate capacity is found in Article 57 of the Constitution, which provides: "The national Ministers must submit to the national Cabinet for deliberation and decision all drafts of laws, all matters for which the Constitution or the law prescribes that course, as well as differences of opinion upon questions which concern the departments of several national Ministers."

As a rule, a proposed law is drafted by an individual Minister within whose department the affair lies; or if several departments are concerned, one Minister drafts the law with the support of the others. Proposals which have received the necessary consent of the Cabinet are brought into the Reichsrat, the Reichstag, and if necessary the National Economic Council, by the Minister concerned, and are defended by him.<sup>49</sup> In case the Reichstag decides

<sup>46</sup> See for example Articles 52-55, 57, 58, 65.

<sup>47</sup> See Articles 15, 18 (Pars. 4 and 6), 33 (Par. 3), 35 (Par. 2), 66, 68, 69, 88, 91, etc. For the decision of the Reichsgericht sustaining this view, see RGSt. Bd. 58, pp. 401 (407).

<sup>48</sup> Glum, p. 5 ff. See Redslob for the view that there is no solidarity of responsibility, *Op. cit.*, p. 280.

<sup>49</sup> Geschäftsordnung No. 24.

upon changes, the draft is again laid before the Cabinet if a question of a fundamental nature or of political significance is involved, or if the Minister concerned is not willing that the Cabinet agree to the changes. The Cabinet is to be consulted before essential alterations in a bill are assented to in the Reichstag or its committees. If the Reichstag or one of its committees makes an essential change, notice concerning it is to be given immediately to the Cabinet. The legislative proposals of the Cabinet, when they come before the Reichsrat, the Reichstag, and the National Economic Council, are to receive united support, even though individual Ministers have different views. It is forbidden to any officer directly or indirectly concerned to work against the unified view.<sup>49</sup> In Germany, then, in contrast with the system of France, where the President has the initiation of laws concurrently with the members of the two Chambers, and with that of the United States, where only members of Congress may introduce bills, the Cabinet as a unit presents the laws to the legislature and supports them before it.

Several constitutional provisions provide that certain specified affairs are to be brought before and decided by the Cabinet as a whole. These affairs include, for example: Bills introduced into the Reichstag by the Cabinet,<sup>50</sup> explanations of the Cabinet to the Reichstag as to its disagreement with the Reichsrat upon legislative proposals,<sup>51</sup> the opinion of the Cabinet as to bills introduced into the Reichstag by the National Economic Council,<sup>52</sup> the standing order of business procedure drawn up by the Cabinet,<sup>53</sup> and the establishment of advisory councils.<sup>54</sup>

Beside the matters which the Constitution prescribes shall be brought before the entire Cabinet for decision, several others are assigned to it by law. For example, the national Budget Law provides that the draft of the budget must be confirmed by the Cabinet.<sup>55</sup> As will be explained later, there is a growing tendency to submit a great number of matters to the Cabinet as a whole. There is nothing in the Constitution to prevent the Cabinet from

<sup>49</sup> Article 68.

<sup>50</sup> Article 69.

<sup>51</sup> Article 165.

<sup>52</sup> Article 55.

<sup>53</sup> Articles 88, 93, 98.

<sup>54</sup> RGBl. 1923, II, p. 17, Section 21.

discussing and taking action on other questions, and in fact its standing order of business lists several affairs which the Cabinet as a whole must discuss and decide:

1. Drafts of ordinances, which are of general political significance.
2. Public announcements, and advertisements of public meetings, if the announcement or the advertisement of the national Cabinet is to take place jointly with the states.
3. Proposals for the appointment of public officers (which extends to their respective salaries according to the salary ordinance) as well as ministerial directors and ministerial councillors.
4. Proposals for the appointment of magistrates who are not yet 35 years old or have not completed 15 years in the service.
5. Proposals for the appointment of officers of the middle class of service to higher service, though these are not yet 40 years old or have not completed 20 years of service.
6. Proposals to place certain employees in free contract relationships or to make appointments for longer time than three years.<sup>65</sup>

The standing order of business governs in some detail the manner in which differences of opinion upon questions concerning the departments of several ministers shall be handled. These differences of opinion are to be laid before the Cabinet for discussion and decision, when a preliminary personal attempt at understanding between the Ministers concerned has been without result. The Chancellor is authorized to order differences of opinion to be discussed in a conference of the Ministers concerned. If this does not result in an agreement, the Cabinet may be asked to decide.<sup>67</sup> Matters of controversy between the Chancellor and a Minister are not referred to the Cabinet, for in all matters of general policy the decision rests entirely with the former.

The Cabinet, then, according to the Constitution and the laws, acts as a unified body in certain affairs. This is indispensable from the political standpoint, but it also has desirable results upon administration, as it prevents too complete a severance of the various branches from one another and does much toward guarding against conflicts between departments.

<sup>65</sup> Geschäftsordnung, No. 18.

<sup>67</sup> *Ibid.*, No. 23.

To prevent the Cabinet from becoming overloaded with work, the order of business provides that all affairs which are laid before it are to be discussed previously between the Ministers concerned, unless exceptions are necessary in the special cases. The points of conflict remaining after the discussion are to be set forth in a statement or in some other suitable manner, with a short memorandum of the solution proposed,<sup>58</sup> and sent to the Secretary of State in the Chancellory,<sup>59</sup> who prepares them for printing. He also arranges for the sittings of the Cabinet according to the detailed assignments of the Chancellor, arranges the division of business, and summons the Ministers to the meetings, notifying them of the orders of the day. He sees that printed copies are prepared of all proposals and drafts of documents which are to be considered by the Cabinet. At least one-half of the members, including the chairman, must be present to constitute a quorum capable of taking action. The sittings of the Cabinet are confidential, as in England, and in particular no information may be given out concerning the part taken by individual Ministers, the vote, and the minutes of the meeting, unless special authorization is given.<sup>60</sup> The office of Secretary of State in a ministry is a very important one, corresponding in part to that of permanent head of department, and in part to that of parliamentary representative. Secretaries of State vote at Cabinet meetings as proxies for absent Ministers, and represent them in other capacities. When there is no Minister at the head of a department, owing to death, resignation, or some other cause, the national President may commission the Secretary of State (or one of several Secretaries of State, as some departments have more than one) to carry on the business of the department and fulfil the functions of a Minister.<sup>61</sup>

Beside the Ministers and the Secretary of State in the Chancellory, cabinet meetings are regularly attended by the head of the President's Bureau, the Chief of Press of the Cabinet, and the clerks. If a Minister is absent or is hindered, the Secretary of State regularly takes his place; the Minister of War is represented by a

<sup>58</sup> *Ibid.*, No. 22.

<sup>59</sup> See Chapter VI.

<sup>60</sup> Geschäftsordnung, Nos. 28, 29, 7, 16. See also Poetzsch, RV. p. 105.

<sup>61</sup> For illustration of this, see Poetzsch, Vom Staatsleben, etc., p. 179.

substitute whose standing is equal to that of a Secretary of State. Other officers require a written authorization in order to act as substitutes or representatives. If a Minister wishes the attendance at a Cabinet meeting of another officer of his ministry, beside the Secretary of State, he must give notice in writing. The chairman decides on the matter of admission. If the officer is allowed to attend, he may participate in the meeting only while the special point is being discussed on which he was asked to speak.<sup>62</sup>

A question of considerable importance from the viewpoint of administration is, what is the position of the Chancellor and that of the Ministers in respect to the whole Cabinet; are they subordinate to it or coördinate with it? Are the Ministers in dealing with the Cabinet, independent organs who must reach an agreement with a second coördinate instance, the Cabinet, or does, as Dr. Glum expresses it, each Minister find a limitation of his own powers and responsibilities in the more extended sphere of the Cabinet as a whole? There can be little doubt that the latter is true; that when affairs are concerned which belong to the Cabinet as a whole, the individual Ministers are not coördinate with the entire body, but are subordinate to it and must submit to its decisions.<sup>63</sup> When unity and solidarity of action are required, therefore, the Ministers act through the Cabinet. All matters which are submitted to the Cabinet as a whole for discussion and are decided by it in its unified capacity, are binding upon the individual Ministers.

But is the Chancellor subject to the same limitations in respect to unified Cabinet action? Although the Chancellor possesses very great powers in respect to the general lines of policy, it is evident that when certain matters are given over by the Constitution and the laws to the decision of the Cabinet as a whole, he is subordinate to the will of the entire body. When the Cabinet is acting in this unified capacity, the Chancellor would seem to hold only the position of the chairman and is merely the first among equals.<sup>64</sup>

<sup>62</sup> Geschäftsordnung, No. 30.

<sup>63</sup> Article 52 of the national Constitution in connection with Articles 53, 55, 57, 58, 61. See also Glum, pp. 6-10.

<sup>64</sup> Anschütz (*Op. cit.*, note to Article 57) says regarding these matters: "The will of the national Cabinet here can be expressed neither through the individual will of the national Chancellor nor through the will of the competent Minister, but only through a majority resolution of the entire ministry under the chairmanship of the national Chancellor."

Due to the economic and political situation in Germany during the last few years, there has developed what may be called an inner cabinet or the economic-political cabinet. The position of the Minister of Finance was greatly strengthened by the budget law of December 31, 1922,<sup>65</sup> which also indirectly strengthened the position of the Chancellor.

When the draft of the budget is presented to the Cabinet for confirmation, expenditures and obligations which the Minister of Finance has refused to include in the budget are to be voted upon by the Cabinet on the demand of the Minister concerned only when the matter in question is of fundamental or extreme importance. Changes in the requests of the President of the Reichstag and the National Court of Audit are in every instance expressly to be acted upon by the Cabinet as well as by the Minister of Finance. If the Cabinet decides to include an expenditure or obligation in the budget against the opinion of the national Minister of Finance, the latter has a right of veto. In this case, such expenditure or obligation can be placed in the budget only if in a further vote a majority of the entire Cabinet vote for it, and the Chancellor votes with the majority.<sup>66</sup>

By these provisions the Minister of Finance is given a great deal of control over the administration of the other departments, and the Chancellor, by refusing to vote against his veto with the majority of the Cabinet, can absolutely check the majority in its control over finance. Further, since only the most fundamental and important matters can be brought before the Cabinet for discussion, the appeal to the Cabinet is closed in many cases.

The budget law, then, has given to the Minister of Finance and the Chancellor a controlling position in the Cabinet which certainly was not intended by the Constitution. This provision has not only changed the relationship of the members of the Cabinet to one another, but has also changed the provision of the Constitution (Article 58) in which a majority vote is contemplated for decisions of the Cabinet.<sup>67</sup> Under this law, the Chancellor and the Minister of Finance become an inner cabinet in respect to financial matters.

<sup>65</sup> RGBl. 1923, II, p. 17. See the discussion of this law in Chapter VIII.

<sup>66</sup> Reichshaushaltsordnung, sec. 21.

<sup>67</sup> On this point see Glum, p. 9 ff.

It is the claim of some authors,<sup>68</sup> that many important decisions as to policy are actually made by the Chancellor with the coöperation of a limited circle of the Cabinet, which usually includes the Minister of Finance, the Vice Chancellor, and the Minister of Foreign Affairs.

**The National Ministers.** The Ministers play the double rôle of being members of the Cabinet and at the same time as a rule heads of departments, or directors of the large branches of the national services. This is, however, not requisite; and in several Cabinets there have been Ministers<sup>69</sup> without portfolio. Nor is it necessary, as has been seen, that the members of the Cabinet be members of a majority party or even members of the Reichstag. Quite often experts are chosen as Ministers, since even partisan considerations may be overruled by special qualifications.<sup>70</sup>

Each individual Minister must have the confidence of the Reichstag, but there is no requirement of a special vote to this effect, as a condition preliminary to taking office. Some expression of confidence, however, is customary.<sup>71</sup> The Cabinet as a whole or any member thereof must retire if the confidence of the Reichstag is withdrawn by an express vote.<sup>72</sup> It is hardly necessary to point out the fact that both individual members and entire Cabinets may withdraw if they lack parliamentary support, even though no vote of lack of confidence has been passed. In November, 1923, after several such resolutions had failed, Stresemann requested a clear

<sup>68</sup> See Glum, p. 39; Poetzsch, Jahrbuch, 1925, p. 179.

<sup>69</sup> In the Scheidemann Cabinet, Ministers David and Erzberger; in the Müller ministry, David. See Handbuch für das Deutsche Reich, 1926, p. 57.

<sup>70</sup> Some of the leading examples of this are: the Minister of Foreign Affairs in 1919, Count Brockdorf-Rantzau; the nonparliamentary expert ministers in the Cuno cabinet of 1922; Postmaster Stingl; Minister of Communication, Groener; Minister of the Treasury, Albert; Minister of Food, Luther. It must be acknowledged, however, that the political sympathies or general inclinations of even non-partisan Cabinet members are usually known.

<sup>71</sup> On February 5, 1927, the Marx Cabinet was given a vote of confidence, receiving 235 yeas against 174 nays. The debates which preceded the vote were stormy, including a strong attack upon the newly appointed Minister of the Interior. See the proceedings of the Reichstag, February 3, 4, 5, 1927. See the same for June 24, 1927, p. 11,055, for a vote on the question of confidence in Stresemann, the Minister of Foreign Affairs.

<sup>72</sup> Article 54.

decision as to whether the Cabinet did or did not possess the confidence of the Reichstag. A motion for a vote of confidence was thereupon made, but it also failed, and the Cabinet resigned. Minister of Economics Wissel withdrew from the Bauer Cabinet in 1919 on account of the rejection of his economic plan by the Reichstag; and Minister of Finance Erzberger resigned in 1920 on account of the personal feeling against him. The history of Cabinet changes under the new Constitution has been that they have in almost every case been brought about by political circumstances rather than by an express vote of lack of confidence. The rules of the Reichstag permit a motion of lack of confidence which is not on the order of the day to be acted upon only after the consent of the house admits it to the order of the day. The President of the Reichstag ruled that a general vote of confidence cannot be followed at once by a vote to withdraw confidence from a single Minister, and the house sustained his ruling.<sup>73</sup>

**Functions of the National Ministers.** The sphere of business of the individual national Ministers is established, fundamentally, in so far as it is necessary, by ordinances of the President. Individual changes of a non-fundamental type may be made by the Chancellor after discussion with the Minister concerned; otherwise the national Cabinet must pass upon them before the Chancellor acts.<sup>74</sup> Many laws also assign functions either to the Cabinet or to some special Minister or Ministers. The outstanding example of this is probably the national Budget Law of December 31, 1922, which, as has been seen, lays many duties and bestows great powers upon the Minister of Finance. A more detailed description of the functions of the Ministers is found in the next following chapter.

*Administration of Business.* It must not be forgotten that the work of departmental administration is not necessarily a function of every Minister, despite the reference of Article 56 of the Constitution to "the sphere of business entrusted" to each. There is no hard-and-fast rule in this matter. Ministers without portfolio are recognized as regular Cabinet members. On the other hand, the Cabinets under the new Constitution have not always contained enough Ministers to head all the departments. Sometimes the Chan-

<sup>73</sup> See the proceedings of the Reichstag for February 5, 1927, pp. 8887-88.

<sup>74</sup> Geschäftsordnung No. 8.



cellor has acted as the head of a department, as when Stresemann was twice both Chancellor and head of the Foreign Office; sometimes a department (in particular that of Reconstruction, now done away with) has had no official head; in the Bauer Cabinet, the Ministries of Food and of Economics were united under Schmidt. In 1925-26, Luther seems to have been at the same time Chancellor, acting head of the Ministry of Finance, and acting Minister of Justice. Poetzsch<sup>75</sup> makes the interesting point that only one vote is permitted to a Cabinet member, regardless of the number of departments which he manages; a Minister without portfolio has a vote.

The rules of business of the Cabinet regulate to a considerable extent the mutual relationships which are to obtain between the Ministers and the other chief governmental organs. As a rule, proposals of the national Ministers may not be brought before the Reichstag or its committees until they have been acted upon by the Cabinet. Exceptions in respect to politically important matters require the consent of the Chancellor; other exceptions, that of all the Ministers concerned.<sup>76</sup>

Laws, orders, and ordinances are to be laid before the national President for his signature only after they have already received the countersignature of the competent Minister. If the content of the document to be signed belongs to the sphere of business of several Ministers, it is sufficient that it be countersigned by the Minister who drafts the measure.<sup>77</sup>

*Supervision of National Affairs.* Article 15 of the Constitution bestows upon the Cabinet the right of supervision in the matters as to which the Reich possesses the right of legislation. The special application of this provision to the states will be discussed later. In matters not handled by the states, the supervision is exercised by means of general administrative orders issued by the Cabinet<sup>78</sup> (or, more accurately, by the Minister whose department is concerned) in the execution of a given national law. The broad language of these provisions appears to bestow upon the Cabinet the right to supervise and to issue administrative orders, even in respect

<sup>75</sup> Vom Staatsleben, p. 179.

<sup>76</sup> Geschäftsordnung No. 10.

<sup>77</sup> *Ibid.*, No. 14.

<sup>78</sup> Article 77; Geschäftsordnung, Section II.

to matters for the execution of which a special organ or agency is created; such as the Railway Administration, the National Spirits Monopoly, and the National Coal Association. As a matter of fact, almost every such agency is in some way related to or connected with one of the ministerial departments. The actual extent and nature of the supervision, however, and the degree of control by administrative orders, must vary in these cases according to the laws creating the special agencies and their organic relationship to a given department.

*Supervision in Respect to the States.* Finally, the Cabinet supervises the states in certain fields. Article 14 of the Constitution provides that national laws shall be carried out by the state authorities in so far as the national laws do not themselves stipulate otherwise. Article 15 provides that the national Cabinet shall exercise the right of supervision in those affairs in which the Reich has the right of legislation. The supervisory powers of the Cabinet thus extend not only to matters in which the Reich has already exercised its legislative authority, but also to affairs concerning which the Reich possesses the right of legislation, even if it has not as yet made use of this right. They apply to all acts of the states which are directed to the execution of national laws or to the regulation or administration of matters falling under the legislative powers of the Reich; such as executory laws, authentications, business orders, administrative decisions, and even the purely technical discharge of business.<sup>79</sup>

An interesting question arising in this connection is, whether supervision is conducted by the Cabinet as a whole or by the individual Ministers. Since Article 57 of the Constitution provides that the national Ministers shall lay before the national Cabinet for its decision such affairs as are provided for in the Constitution and the laws, and Article 15 provides that the "national Cabinet" shall exercise the above-mentioned right of supervision, it seems that theoretically, at least, whenever a Minister observes irregularity in the execution by any state of affairs coming within the control of his department, he must convey the fact to the Cabinet as a whole, after which it determines whether it will make use of its powers of supervision. If this were not true, as Braasch points out,<sup>80</sup> the

<sup>79</sup> Triepel, *Streitigkeiten*, p. 65; Stier-Somlo, Vol. I, p. 390.

<sup>80</sup> *Die Reichsaufsicht* p. 84 (1925).

supervisory right might be used by the different Ministers according to their own particular political views rather than according to the intent of the law, and there would be no unity in supervision. In practice, however, there is no doubt that supervision can be assigned to individual Ministers by law, or that the Cabinet itself may assign this competence to individual Ministers.<sup>80</sup>

The means by which the Cabinet discharges this supervisory function are: <sup>81</sup>

1. The issuing of general instructions.
2. The sending of a commissioner to the state central authorities, or, with their permission, to the subordinate state authorities.
3. Requests of the Cabinet to the state authorities, that they remove defects in the state administration of the national laws.

Article 15 of the Constitution provides that in so far as the national laws are carried out by state authorities, the Cabinet may issue general instructions. Article 77 provides that the Cabinet shall issue general administrative provisions for the execution of national laws, unless the laws provide otherwise. These require the consent of the Reichsrat, when the execution of the national laws is given over to the state.

Although there is considerable dispute as to the meaning of these articles,<sup>82</sup> perhaps the view may be accepted as correct that the general instructions issued under Article 15 are merely technical regulations to be followed by the administrative officers, whereas the executory provisions are broader in scope and may, as Triepel suggests,<sup>83</sup> be considered as subsidiary laws, which are not to bind the states except with the consent of the Reichsrat.

For the purpose of supervising the execution of national laws, the Cabinet may send commissioners to the state central authorities, and with their consent to the subordinate authorities.<sup>84</sup> Although little is said in the Constitution regarding the powers of these commissioners or their methods of supervision, it may be assumed that

<sup>81</sup> Article 15.

<sup>82</sup> See Anschütz, pp. 73 ff., 232 ff.; Wittmayer, *Weimarer Verfassung*, p. 238; Poetzsch, p. 65; Triepel, *Streitigkeiten zwischen Reich und Ländern*, p. 84; Cohn, *Reichsaufsicht*, p. 56; Stier-Somlo, Vol. I, p. 390; Braasch, p. 76; Freytagh-Loringhoven, *Die Weimarer Verfassung*, p. 244.

<sup>83</sup> *Streitigkeiten zwischen Reich und Ländern*, pp. 83, 84.

<sup>84</sup> Article 15, par. 2.

they would possess the right to examine into all steps taken by the states in executing the national laws; to require reports, copies of acts, documents, etc.; to coöperate with the state authorities in necessary investigations, and to assist them in examining witnesses and experts. It is questionable whether these commissioners have the right under any circumstances to examine into the subordinate agencies and measures of the states except by permission of the state authorities.<sup>85</sup> The Constitutional provision makes it quite clear that the supervisory powers of the national Cabinet in this connection extend to the local units of government only by permission from the central authorities of the states. It is an interesting question whether this restriction would hold as against the Cabinet's duty to see that the national laws are executed, in cases where these laws themselves require certain actions on the part of the municipalities. To take one example of many, a national law of 1922<sup>86</sup> requires municipalities to submit specified information to the national Minister of Labor and the highest state authorities, as well as to persons commissioned by them. If any municipalities should fail in this duty, would the Minister of Labor or his commissioners require the special permission of the state authorities, despite the law, in order to deal with the delinquents?

Paragraph 3 of Article 15 of the Constitution provides that the state administrations are obliged, upon the request of the national Cabinet, to remedy defects in the execution of the national laws. In case of differences of opinion on this matter, either the Cabinet or the state administration may appeal for a decision of the Staatsgerichtshof as to the meaning of the law in question and the actual existence of a defect in its execution by the state, unless some other court has been given jurisdiction by national law.

There are two main differences between the requests of the Cabinet that the state administrations remedy defects, and the general instructions discussed above. The requests requiring the remedying of defects are a method of superior supervision rather than direct supervision, since if the national laws are not being carried out properly by the intermediate and subordinate authorities, the Cabinet may only address its requests to the central in-

<sup>85</sup> Braasch, p. 75.

<sup>86</sup> RGBI, I, p. 678, Section 15.

stance, while the general instructions may be addressed to any of the state authorities. In the second place, the general assignments have a preventive and general character, while the requests for the remedying of defects refer to faults already existing and are applicable to concrete cases.<sup>87</sup>

After receiving a request for the remedying of defects, the state administration seems to have two choices: It may comply with the Cabinet's suggestion, or, it may appeal to the Staatsgerichtshof. In case the Staatsgerichtshof decides in favor of the Cabinet, the state administration is finally required to remedy the defects.<sup>87</sup> In case the state administration does neither of these things, it is the consensus of opinion that the Cabinet must secure a decision in its favor from the Staatsgerichtshof before requesting the President to proceed with federal execution,<sup>88</sup> although the language of the Constitution makes no conditions as to the way in which he shall establish the fact of a failure on the part of a state to fulfil its duties.<sup>89</sup>

Even when there is no question of failure in the fulfilment of a duty, the Cabinet or any competent highest authority of the Reich or of a state may request the court to render an opinion on the question of compatibility between a provision of state law and the existing national law.<sup>90</sup> Failure on the part of the state to accept the finding of the court would undoubtedly establish the conditions for national execution and would justify the Cabinet in requesting it.

The Cabinet has a right of veto against state laws governing the socialization of natural resources and of economic enterprises, also the production, manufacture, distribution, and price-regulation of generally important economic goods, insofar as these laws affect the welfare of the Reich as a whole.<sup>91</sup> The state appears to have no recourse except political action in such a case, as the courts of Germany steadfastly refuse to interfere with matters of discretion.

When no other court of the Reich has jurisdiction, the High Court of State decides any controversies in public law between the Reich and a state, on the application of either party.<sup>92</sup>

<sup>87</sup> Braasch, p. 79.

<sup>88</sup> See Triepel, *Streitigkeiten*, p. 61; *Reichsaufsicht*, p. 667 ff.

<sup>89</sup> See Article 48, par. 1; also the discussion of this point in the preceding chapter.

<sup>90</sup> Article 13.

<sup>91</sup> Article 12; Article 7, No. 13.

<sup>92</sup> Article 19.

**Cabinet Ordinances.** In the fulfilment of its various functions the Cabinet, like all the highest administrative and executive agencies in Germany, acts by means of ordinances. These are either administrative, that is, binding upon the subordinate agencies of administration in their duty of carrying out the law; or legal, that is, binding with the force of law upon citizens in general. Many Cabinet ordinances, of course, contain provisions of both kinds.

No special authorization is required for the issuing of purely administrative ordinances, particularly since the relation of the national Cabinet to the states in this matter has been settled by the Constitution. For the rest, the right to issue directions to subordinates within a department is conceded to be an indispensable part of the administrative authority.

Legal ordinances, on the contrary, since they lay upon the citizen further duties and obligations than are imposed by the Constitution or the statutes, can be issued only on the basis of a special authorization. Such authorization may give the broad general right to act on a certain matter or for a certain purpose, as in the cases, already described,<sup>98</sup> of the President's emergency power, and the emergency authorization acts of 1921 which practically gave the Cabinet a free hand. The authorization is more likely, however, to be that of filling in the details of a law which merely outlines a general policy, or of issuing executory provisions which, in distinction from purely administrative provisions, may apply to citizens in general.

Although the laws quite often bestow on other agencies, such as the Reichsrat or even the states<sup>94</sup> or the municipalities, the right to issue ordinances of one or the other type, the usual recipient of this right is the Cabinet or some member thereof. Article 179 of the Constitution bestows upon the Cabinet, subject to constitutional provisions as to ratification by the Reichsrat, the authority to issue ordinances that formerly belonged to the States' Committee. Often the laws provide that the Cabinet shall issue ordinances subject to the consent of the Reichsrat or some other public organ or agency. For example, the consent of the Reichsrat is required to Cabinet ordinances issued under the "Sweet stuffs

<sup>98</sup> Chapter IV.

<sup>94</sup> See RGBl. 1926, I, p. 528, Section 5.

law," which may impose penalties of arrest, fine, and imprisonment.<sup>95</sup> When the ordinance power is vested elsewhere than in the Cabinet, it is likely to be given to the individual Minister or Ministers whose departments are particularly affected by the law in question. The consent of the Reichsrat or of some other agency may or may not be required. Thus, specified departures from the regular social insurance rates may be ordered by the Minister of Labor;<sup>96</sup> the Minister of the Interior may permit exceptions to certain provisions of the law regulating fever thermometers;<sup>97</sup> the Minister of Finance may make certain adjustments in respect to the transportation tax.<sup>98</sup>

The Cabinet also has the right to issue, with the consent of the Reichsrat, regulations of conditions and rates for the use of the postal and railway services and other means of communication and for the establishment of advisory councils.<sup>99</sup> Schoen claims that these ordinances, although they compel the public to act in certain prescribed ways, are merely administrative and not legal, since they do not coerce anyone except employees, but merely prescribe methods to which the public voluntarily submit when making use of the services.<sup>1</sup>

The Reichsgericht has held that the ordinance power possessed by the Cabinet may be exercised by the individual heads of departments; also that the signature of one Minister is sufficient for the validity of an act or ordinance of the national President, even though several Ministers might be considered as interested in the matter.<sup>2</sup> It has held, further, that legal ordinances based on a proper legal authorization have the force of law and as such may even amend laws already in effect.<sup>3</sup>

The attitude of the court on the question of judicial examination of ordinances has been stated in an important opinion, as including

<sup>95</sup> RGBl. 1926, I, p. 409, Section 12. See *Ibid.*, 1924, I, p. 701, etc.

<sup>96</sup> RGBl. 1926, I, p. 53.

<sup>97</sup> *Ibid.*, p. 213.

<sup>98</sup> *Ibid.*, p. 357, Section 24.

<sup>99</sup> Articles 88, 91, 93, 98. See Chapter XVI on this matter.

<sup>1</sup> Schoen, Paul, *Das Verordnungsrecht und die neuen Verfassungen*, Archiv d. Öff. Rechts, 1923-24, N. F. 6, p. 133 ff. [137].

<sup>2</sup> Entscheidungen des Reichsgerichts, St. 58, p. 401 [406]; St. 56, p. 161 [162, 163].

<sup>3</sup> *Ibid.*, St. 55, p. 88 [90, 91]; St. 56, p. 177 [179 ff].

questions of authorization, form, and consistency with a superior legal norm.<sup>4</sup>

It is an interesting fact that ordinances issued by the Cabinet are often amended or repealed by national laws. This is not necessarily interpreted as a vote of lack of confidence.<sup>5</sup>

**Controls Over the Cabinet.** The very great powers possessed by the Cabinet are exercised under several kinds of control. Although its primary responsibility is to the Reichstag, this body is not the sole source of controls and limitations affecting the ministry and the individual ministers.

*Constitutional and Legal Control.* Since the German Cabinet is not an outgrowth of custom, but an organ of government established by a written Constitution, the Constitution itself may be said to control the Cabinet in all points which it covers. Many laws also act as controls, in placing duties upon the Cabinet or upon individual members, in subjecting their actions to the approval of another agency, and in altering ordinances. These constitutional and legal controls may be enforced, according to circumstances, either through impeachment before the Staatsgerichtshof, or through ordinary legal process. The civil liabilities which the Law of Officers lays upon all public officers may be invoked against members of the Cabinet, and the penalties imposed by this law may be exacted.<sup>6</sup> The regular courts also exercise a certain control over the Cabinet by examining into the legality of ordinances.

*Control by the President.* Only a few words are needed on the President's powers of control over the Cabinet, as this subject has been covered in another connection. Although the President of Germany formally appoints and dismisses the Chancellor, and upon the recommendation of the latter, the Ministers, they are actually appointed and dismissed by the parties in power in the Reichstag and are in no way under his orders or subject to his directions. Political and personal circumstances may give the President a good deal of influence with the Cabinet, and he may even

<sup>4</sup> *Ibid.*, St. Bd. 56, p. 177 [181]; p. 371 [375].

<sup>5</sup> For examples, see RGBl. 1925, I. p. 185; RGBl. 1926, I, p. 413.

<sup>6</sup> The Constitution does not protect members of the Cabinet against criminal proceedings, as it does the national President and the members of the Reichstag (Articles 37, 43). This strange omission might possibly lead to awkward complications at times.



be able at times to make certain stipulations as to the policy which the Chancellor is to follow, but even this depends entirely upon the situation in the Reichstag. No Minister is in any way responsible to the President, who is therefore wholly without control over the Cabinet, except for accidental circumstances.

*Control by the Reichsrat.* The Constitution bestows upon the Reichsrat two important lines of control over the Cabinet. The first is that of giving or refusing consent to bills for laws. Even though a bill to which consent is not given may be introduced into the Reichstag, the position of the Reichsrat must be stated. The second, which is probably the more important in practice, is that of giving or refusing consent to cabinet ordinances for the execution of national laws which are to be administered by the states, and to certain ordinances affecting railways, waterways, and other means of communication. No method is provided for dispensing with the consent of the Reichsrat in these matters. Numerous laws have added greatly to its powers of consent, so that it now possesses a good deal of real control over Cabinet action in specific fields. Other lines of control, such as the right to be informed by the Cabinet concerning the conduct of national business and the opportunity to present the views of the states on all matters affecting them, are less tangible but not to be overlooked.

*Control by the Reichstag.* The most fundamental and important control over the Cabinet is, of course, that exercised by the Reichstag. Its central feature is the essential one of all parliamentary governments, namely, the constitutional requirement that the Chancellor and the Ministers must enjoy the confidence of the legislature for the administration of their offices and that any one of them must resign if this confidence is withdrawn by a formal resolution. The Reichstag also possesses the right to bring a bill of impeachment against any Cabinet member.

The legislative powers of the Reichstag give it a further control over the Cabinet. Recent laws have bestowed many powers and functions, duties and obligations, upon the Cabinet and individual members thereof, and have also given to various agencies, in particular the Reichsrat, a considerable right of giving or withholding assent to ministerial ordinances carrying out these laws. The custom of altering or revoking Cabinet ordinances by means

of statutes, and the power of the Reichstag to alter administrative plans in connection with voting the budget, constitute additional means of control by legislative action.

As has been pointed out elsewhere, the right to summon Cabinet members, to demand information from them, to question them, to place interpellations, to have their acts examined into by investigating committees,<sup>7</sup> and to pass resolutions of censure, are all of assistance in giving the Reichstag an effective control over the Cabinet. This type of control works out day by day; its most common expression is the vote of the Reichstag that the Cabinet be requested to perform some act, prepare a bill on a certain subject, investigate a problem, and so on.

An interesting document<sup>8</sup> submitted to the Reichstag in December, 1926, by the Minister of the Interior, brings together in parallel columns the formal requests made to the Cabinet by the Reichstag during the term of 1924-1926, together with the Cabinet's replies. These cover a wide range of subjects, including suggestions as to amending ordinances, requests for the drafting of bills, resolutions asking for changes in the budget, and requests for attention to petitions brought by individuals. A few examples may be cited:

- I. Resolution: To request the national Cabinet to hasten the preparation of a vocational education bill, so that it may be acted upon by the Reichstag in the current fiscal year.

Answer: The draft of a vocational education bill, with supporting arguments, has been prepared by the department concerned and has been laid before the Cabinet for its decision.<sup>9</sup>

- II. Resolution: To request the Cabinet to take measures immediately, enabling those now employed as civil servants to obtain situations in other branches of administration upon removal from their positions.

Answer: The resolution coincides with the efforts of the Cabinet to employ in other ways the superfluous civil servants; insofar as the requirements of the service permit, this will be done.<sup>10</sup>

<sup>7</sup> See Köchling, *Das parlamentarische Enqueterrecht*, etc., p. 31 ff.

<sup>8</sup> Reichstag III, 1924-26. Drucksache No. 2821.

<sup>9</sup> *Ibid.*, p. 35.

<sup>10</sup> *Ibid.*, p. 83, No. 6.

III. Resolution: To request the Cabinet to present to the Reichstag immediately a bill for the national law provided for in Article 48, paragraph 5, of the national Constitution.

Answer: The bill of an executory law to Article 48 of the national Constitution is in course of preparation.<sup>11</sup>

IV. Resolution: To submit to the Cabinet for its attention the petitions:

\*   \*   \*   \*  
\*   \*   \*   \*

7. . . . Concerning the grant of an accident pension to the laborer Josef Manns in Honnigen (Rhein). . . .

Answer: The examination of the matter is not yet completed. The settlement is not to be expected before the middle of December.<sup>12</sup>

V. Resolution: To request the Cabinet:

1. For the assistance of bee-keeping, to arrange as soon as possible long-time credits for bee keepers and apiarists, who have fallen into difficulties through the bad harvests of recent years.

Answer: There are no funds available for this purpose.<sup>13</sup>

*The Cabinet's Influence Over the Agents of Control.* The above quotations indicate that the Cabinet is by no means the slave of the Reichstag, or even its agent, subject to its orders. No picture of control is complete without insistence on the fact that the Cabinet is the trusted leader of the legislative body, and that no Cabinet can remain in power unless it is so regarded. The Chancellor—in practice the Cabinet—must formulate policies which the Reichstag will accept, must secure the enactment of laws embodying these policies, and must administer the business of the commonwealth, acting in all as the guide rather than the mere servant of the legislature. The same thing is true of its relations to the President and to the Reichsrat. Unless it can take this position of leadership, it is not a true “government,” and must give way to a Cabinet which is able to govern.

**Summary and Conclusions.** Although the German National Cabinet is a constitutional creation rather than a result of political evolution, it cannot be understood by a study of the Constitution

<sup>11</sup> *Ibid.*, p. 110, No. 11a.

<sup>12</sup> *Ibid.*, pp. 125, 129, 130.

<sup>13</sup> *Ibid.*, p. 135.

alone. This is due in part to the incompleteness of the constitutional provisions, but in much larger part to the fact that some of these provisions fail to fit the political situation. Law and custom, therefore, have operated to make important changes and adjustments in the Cabinet system as outlined by the Constitution.

The strongest force operating to bring about such changes has been the multiplicity of political parties, which, together with the system of proportional representation, is responsible for the fact that there is never a true party majority in the Reichstag. Every majority supporting a Cabinet under the present Constitution has been a coalition of several factions. This has meant that the Chancellor cannot be the predominant shaper of public policy as contemplated by the Constitution, since any Cabinet policy which can hope for support in the Reichstag must be the result of a compromise reached by the leaders of the majority bloc. The choice of men for all positions, including that of Chancellor, is also governed by party bargaining, with the inevitable result that positions must sometimes be filled, not by the best man available, but by a person whom all the parties supporting the Cabinet will agree to accept. Since no one party can assume the responsibility for either policy or administration, it follows that expressions of parliamentary confidence or lack of confidence in the Cabinet may often be matters of partisan agreements rather than valid criticisms of the government in power. This is not necessarily or inevitably the case, since party differences may be and have been subordinated to the general welfare at times of crises, and the work of the Cabinet has been criticized, as nearly as is humanly possible, on its merits. The dangers, however, are ever present.

An interesting aspect of the Cabinet system in the Reich is the distinction between the individual Ministers collectively, and the Cabinet as a unified body. The Chancellor and the Ministers have individual spheres of action, but certain matters, including all bills which are to be introduced into the Reichstag, are subjected by the Constitution and the laws to the action of the Cabinet as a whole. In this case, decisions are made by majority vote. The budget law departs from the constitutional provisions for Cabinet action by giving to the Chancellor and the Minister of Finance special powers in connection with the establishment of the budget.

A considerable power of subordinate legislation is enjoyed by the Cabinet. Since it practically exercises the constitutional powers of the President because of the necessity of countersignature, it organizes the administration. This means that the actual responsibility of setting up an efficient administrative machine rests with those most closely in touch with both the general policies and the details of administration, most able to make workable adjustments, and most clearly accountable for results. The legislature need not concern itself with minute problems of departmental organization, as it does in the United States, where Congress, insistent upon some type of control and powerless to reach the heads of departments, organizes the departments themselves. The German Cabinet is not beyond the reach of this type of control, which is occasionally exercised by the Reichstag on a small scale when the budget is voted; but the responsibility for organization is never assumed by the legislature.

Another result of Cabinet organization of administration in the Reich, is its unified character. Every administrative commission, board, or other agency is in some way connected with one of the great departments and in general subordinated to it. There is no legislative jealousy of an unreachable Cabinet, and no tendency to establish a multiplicity of agencies which the legislature rather than the Cabinet can control. On the contrary, any special agencies which may be needed are ordinarily planned by the appropriate department and officially related to it. The advantages of this system over the scattered and decentralized administrative systems in the United States, particularly in the constituent states, are very considerable. It lessens repetition and overlapping of functions, as well as overhead expenses of every kind, and is, therefore, a measure of financial economy. It makes possible a budgetary summary of all expenditures for given purposes such as never can be secured when many separate and unrelated agencies divide among them the functions of administration. It enables the Reichstag to reach any part of the administrative work through the Cabinet, and spares the countless conferences and all the petty lobbying and other drains upon the time and energy of the legislature, which are inevitable when numerous independent agencies must struggle for grants of money and privileges. In other words, it is a simple and efficacious

aid to the attainment of economy, efficiency, and definitely located responsibility.

The emergency power and the right of federal execution bestowed upon the President by Article 48 of the Constitution are also exercised by the Cabinet. The nature and significance of these powers have been discussed elsewhere in this book so extensively that it is only necessary at this point to call attention to the fact that in making use of them the Cabinet is performing functions both executive and legislative in nature.

The subordinate legislative powers of the Cabinet, however, are not merely those nominally possessed by the President. It issues administrative ordinances for the execution of national laws, subject to the consent of the Reichsrat when these laws are to be administered by the states, and to such other controls as the laws themselves may institute. These ordinances often fill in the details of matters which the legislature has only outlined, and thus make a closer and better adjustment to practical needs than an ordinary statute would be likely to provide; moreover, the changes which experience demonstrates to be advisable are more easily made when the details are settled and altered as necessity arises, by ordinance rather than by statute. Not only administrative details, but actual legal provisions as well, may be established by ministerial ordinances when the right to issue these is bestowed by the Constitution or the laws. The courts have repeatedly held that such ordinances, issued on the basis of a proper authorization, have the force and effect of laws. As ordinances having the force of law are not new in Germany, but a long established branch of law, with well-defined limitations, the bestowal upon the Cabinet of the right to issue them is not in either intent or effect an encroachment upon the powers of the legislature. On the contrary, it is a method of relieving the legislature of much detailed work, without interfering in the least with its power to legislate or its power to control the holder of the authority to issue legal ordinances.

The function of directing the various branches of administration is performed independently by the Ministers acting as heads of departments, within the main lines of policy outlined by the Chancellor. As in most other countries, much of the actual work of the departments is carried on by the secretaries of state and other high

permanent officers. The Ministers are really liaison officers between the active administrators on the one hand, and the Cabinet as a whole and the legislature on the other.

Since in Germany the individual states carry out many of the national laws, there is evidently a need for some national authority whose function it is to see to it that they do so correctly, efficiently, and uniformly. This authority, as established in the Constitution, is the Cabinet. Although the courts, the President, the Reichstag, and the Reichsrat all have certain functions to fulfil in securing the proper execution of national laws by the states,<sup>14</sup> the Cabinet bears the chief burden of responsibility in the matter. As methods of supervision, it issues general instructions, sends commissioners to observe the carrying out of the national laws, and formally requests the state administrations to remedy defects. Through these means, supplemented by the President's powers under Article 48, it is able to bring about a satisfactory conduct of that part of the national administration which is entrusted to the states. To prevent the Cabinet from exercising its function of supervision in an arbitrary fashion, certain judicial remedies are opened to the states.

German public law fully recognizes the principle that an agency entrusted with such extensive and important powers as those possessed by the Cabinet must be duly controlled in its exercise of these powers. Constitutional provisions for the control of the Cabinet are numerous; and these are supplemented by legal provisions. Several types and agencies of control are provided, each adapted to meet a particular situation. Political control is exercised chiefly by the legislature; judicial and administrative control are exercised by the courts or the administrative courts in passing upon ordinances, and by the Reichsrat in giving or refusing assent to ordinances; civil and criminal control are exercised by the ordinary courts. The question must be raised whether the principle of control is not overemphasized, whether the controls provided are not so many and so varied as to hamper the Cabinet unduly. Particular objection may well be made to the growing custom of requiring the consent of the Reichsrat, of the National Economic Council, of a committee of the Reichstag, or of some other agency (occasionally of more than one such agency) as a condition pre-

<sup>14</sup> See Chapter III, and Braasch, p. 85 ff.

liminary to the issuing of ordinances. Political, legal, and judicial control would seem to be sufficient to ensure that ordinances remain within the limits set by the Constitution and the laws, and that they be adapted to the political, economic, and social situation as this situation might appear to the people's representatives.

It is evident from the above picture, that the national Cabinet of Germany plays an important part in both politics and administration. In a very real sense it is at once the national planning authority, a subsidiary legislative authority, the director of national administration, and the supervisor of state administration of national functions. Its acts are subjected to several forms of control, each intended to provide for a given situation; such as control over policies, control over subsidiary legislation, control over the execution of national laws, control over acts which affect the states, and control over personal violations of the Constitution or laws.

Although its general outlines are those of the Cabinet system in other countries possessing a parliamentary form of government, certain unusual features and developments make the German system particularly interesting. The powers bestowed by the Constitution and laws upon the Chancellor and the Minister of Finance, and the modifications of these powers caused by the party situation, are a clear demonstration of the truth so often exemplified in the constitutional history of the United States, that no governmental institution, however carefully planned, can escape the effect of political forces. In the relation of the Cabinet to the Reichsrat is seen an ingenious device for bringing about a working adjustment between the national government and the governments of the states, and for facilitating the Cabinet's work of supervising state administration of national laws. The rather lengthy list of controlling agencies suggests doubts as to the necessity and value of so many and so scattered checks upon the administration, which appear to violate the fundamental principle of parliamentary government, that (except for infractions of law under circumstances calling for judicial intervention) the Cabinet's responsibility for policy and administration should be directly and solely to the legislature. A remarkable development is the considerable number of men who have served in numerous Cabinets of varying political composition. All these noteworthy features may be considered as attempted



solutions of the special problems of the Reich or adjustments to political and social necessities. Some of them may be expected to change or perhaps disappear if a consolidation of parties takes place; but others, in particular the filling of all chairmanships in the Reichsrat by Cabinet members, are, so far as it is possible to foresee, permanent characteristics of the national Cabinet system in Germany.

## CHAPTER VI

### DEPARTMENTAL ORGANIZATION

Although the exact organization of the government departments in Germany, as everywhere else, is changed from time to time to meet changing conditions, so that no description is of permanent validity, it is nevertheless worth while to examine into this organization as it stands at present, in order to gain a general knowledge of the way in which the work is divided, and of the type of officer in charge. This chapter will, therefore, be devoted to a brief outline of departmental organization according to the latest official report.<sup>1</sup>

**The Chancellory.** The national Chancellory manages the intercourse between the Chancellor and the national Ministries, the political bodies, public authorities, and the press. It keeps the Chancellor informed as to current questions of general policy, and brings to his attention matters which must be decided. It also looks after the current affairs of the Cabinet as a whole, especially the arrangements for meetings of the Cabinet, and the minutes or records of the same, as well as special ministerial conferences. Finally, it supplies public information as to the policy, the work, and the decisions of the national Cabinet.

The personnel of the Chancellory includes, beside the Chancellor, a secretary of state, a ministerial director, a ministerial bureau director, and several referees or legal advisers of various ranks, as well as the requisite subordinates. The Chancellory maintains in Munich an office which serves as an agency or representative of the national Cabinet. This is manned by an "Ambassador" and a government councillor.

<sup>1</sup> Most of the material in this chapter is obtained from the official volume called "Handbuch für das deutsche Reich, 1926." This is a government publication prepared annually (as a rule) by the Ministry of the Interior. A certain difficulty is experienced in finding exact English equivalents for various official titles which have no duplicates in either the United States or Great Britain; but the translations finally chosen are those which give as clear an idea as possible of both the German title and the nature of the office.

The Chancellory deals directly with the official plenipotentiaries of the states (except Prussia) who are sent to the Reichsrat; and who maintain offices in Berlin in their additional capacity as representatives of their state governments to the national Cabinet. In 1926 about a dozen of the states had specially authorized members of the Reichsrat to this effect.

Under the joint direction of the Chancellory and the Ministry for Foreign Affairs is placed the United Press Division of the Cabinet, which has charge of relations with the press, both domestic and foreign. Its chief officers are: A press chief, with the title of ministerial director; a manager, and two other executives of the rank of executive legation councillors.

The Chancellory is in charge of the National Center for Home Service. The duty of this division is the supplying of exact information upon questions concerning foreign policy, domestic policy, social and cultural matters; not in the spirit of any party, but from the standpoint of the whole nation. The Director is a superior government councillor, who is advised by a parliamentary council of members of the Reichstag.

**Ministry for Foreign Affairs.** The national Minister for Foreign Affairs is assisted by a secretary of state. Directly under them are the following subdivisions, each with its own head:

For etiquette and ceremonial, foreign diplomatic and consular bodies, presentation to the national President.

For German affairs.

For questions of the League of Nations.

For general questions of economic information.

Commissioner for economic negotiations.

Commissioner for international negotiations as to questions of navigation, and delegate to the river commission.

Economic and reparations policies.

A ministerial bureau director supervises the general work of the department as distributed among six divisions. Each of these has its own manager, with the title (in most instances) of Ministerial Director. As a rule the managers have one or more associates or assistants, whose titles vary greatly from one division to the next. The divisions are as follows:

*Division I.* Personnel and administration.

*Division II.* Europe with the exception of Great Britain, Scandinavia, Russia including the succession states. Disarmament reports and air traffic service.

*Division III.* Abyssinia, Afghanistan, Great Britain including all colonies and spheres of interest in the Orient, Liberia, the Central and South American states, Persia, Turkey, United States of America with the exception of the Philippines. Economics of raw materials. Navigation.

*Division IV.* Danzig, Esthonia, Finland, Lettland, Lithuania, Poland, Scandinavia, Union of Socialist Soviet Republics, Asiatic Colonial Possessions of the European States, Philippines, China, Japan, Siam.

*Division V.* Legal matters ; in particular general questions of the execution of the peace treaty.

*Division VI.* Germans in foreign countries, cultural affairs.

As has already been mentioned, this Ministry has joint direction with the Chancellory, of the Press Division of the national Cabinet.

It also maintains in Darmstadt a representative of the foreign office and of the national Cabinet.

Under the Ministry for Foreign Affairs is an examining committee composed chiefly of university professors in history, government, international law, and the like ; and of persons who have been in the public service in various capacities. This committee gives the final examination to candidates for the diplomatic and consular services.

This Ministry appoints a commissioner of ambassadorial rank, under whom are several officers whose duty it is to represent the Reich before the mixed courts of arbitration established by the Treaty of Versailles and to look after the interests of German nationals in private cases coming before these courts. It maintains also an office with the function of examining into questions of foreign estates left by deceased nationals and making other researches and inquiries concerning the status of German citizens in foreign countries.

The Archaeological Institute of the German Commonwealth, with its central office at Berlin and branches in Rome and Athens, is under this ministry, as is the Roman-German Commission at Frankfurt. These agencies make researches in the domain of classical antiquity, and publish their findings. Similar work is done by another organization placed under this ministry : the German Institute for Egyptian Archaeology in Cairo.

Special branch offices and information offices are established by the Ministry for Foreign Affairs in most of the principal cities of

Germany, for the purpose of keeping in touch with local interests in connection with questions of foreign trade.

The Ministry for Foreign Affairs, naturally, is in general charge of matters concerning German representation abroad and of all affairs dealing with embassies, consulates, and passport offices. The diplomatic and consular representatives sent by foreign Powers to Germany must of course keep in close touch with this ministry.

**Ministry of the Interior.** The Ministry of the Interior handles all matters of internal policy and administration which do not belong to the particular sphere of operation of some other ministry. One of its most important activities is the publication of certain official journals and other materials, as follows:<sup>2</sup>

The National Law Gazette (Reichsgesetzblatt).

National laws are promulgated through publication in this gazette, which also publishes treaties, information concerning the ratification of treaties, ordinances having the force of law, and so on.

The National Ministerial Gazette. Central Gazette of the German Reich.

In this journal appear general executory directions, certain other administrative ordinances, official communications of various sorts, and announcements concerning the appointment and dismissal of the higher public officers.

The German National Advertiser, which is connected with the Prussian Advertiser.

This journal publishes administrative ordinances which do not appear in the official publications just mentioned; announcements of the appointment and dismissal of the higher public officers; and certain economic laws, ordinances, announcements, and the like, especially those dealing with money, banking, and finance.

The Appointment News.

This is a bi-monthly list of vacancies in and appointments to civil service positions, etc.

Handbook for the German Commonwealth.

This book is published as circumstances seem to demand it, ordinarily once a year. It contains the complete official list of all the

<sup>2</sup> The assignation of material to one or another of these official publications is governed by principles set forth in a "Joint Order of Business" which regulates the intercourse of the Cabinet with the Reichsrat, the National Economic Council, and the Reichstag. Quoted in Poetzsch, *Vom Staatsleben*, etc., p. 180 ff., sec. 67. The German names of the various official publications are found in the bibliography at the end of this book.

highest authorities in the Reich, legislative, judicial, executive, and administrative, with names and addresses of the superior officers and much other valuable information.

Under the Minister of the Interior are two secretaries of state, one of whom has general charge of conducting the work of the department, and is the official deputy or representative of the Minister, while the other manages the division for Education and Schools. Directly under the executive secretary of state is the control of matters of personnel which concern the Ministry and the Interior Service in general. This is handled by referees of several ranks.

A Political Bureau is also placed immediately under the executive secretary of state. The manager of this bureau is a national commissioner, who is assisted by referees bearing various titles. The Political Bureau has charge of matters of domestic policy, safety of the Republic, association and assembly, rights of publication, publicity service for the Ministry, organs for the maintenance of public safety and order (national commissioner for the guardianship of public order, police for order, technical emergency aid, gendarmerie, coöperation with the military force), trade and traffic in arms, measures according to Article 48 of the national Constitution,<sup>3</sup> fulfilment of the law for the execution of Articles 177 and 178 of the Peace Treaty,<sup>4</sup> especially the law of March 22, 1921,<sup>5</sup> air travel and wireless telegraphy (insofar as these do not fall within the sphere of competence of the Ministry of Commerce or the Ministry of the Postal Service), guardianship against disaffection on the part of any state, appeals for indemnities made by innocent persons who have suffered injury from arrest, and so forth.

The general functions of the Ministry of the Interior fall into three main divisions, as follows:

<sup>3</sup> It is interesting to observe that although the maintenance of public safety and order is bestowed upon the President by Article 48, and the measures to this end are left to his discretion, the Ministry of the Interior assumes the function of gathering relevant information, which, it may be added, is supplied to the Cabinet rather than directly to the President. See *Handbuch für das deutsche Reich*, 1926, pp. 132, 151.

<sup>4</sup> RGBl. 1919, pp. 932-35. These articles forbid the practice of military arts by shooting clubs and educational associations, etc.

<sup>5</sup> RGBl. 1921, p. 235. This is a law directed to the enforcement of Articles 177 and 178 of the Treaty of Versailles, and penalizing infractions of the provisions there established.

*Division I: Constitution, Administration, and Civil Service.*

This division handles affairs dealing with the interpretation and fulfilment of the national Constitution, national elections, official seals, public law, public organization, official etiquette, and public ceremony. Through it are handled relations with the Reichstag, the Reichsrat, and the Supreme Judicial Court. It cares for the official publications described above. Questions of public interest concerning religious and ecclesiastical matters are handled by it. Affairs touching upon national administration, administrative reform, administrative law and the administrative court system, come to this division. It also deals with the legal rights of public officers (except the salary law), the application of the present law of officers and the preparation of a bill for the long-contemplated new law of officers, the matter of disciplinary authorities, the organization of the civil service, the economic situation of civil servants, the problem of former army officers on half pay, waiting list, announcement of appointments. War payments, compensation for the quartering of troops, and payment in kind, are managed by this division. It also handles the Walter Rathenau Foundation; municipal questions; and matters that concern Alsace-Lorraine.

It collects and publishes the national laws, and is now at work upon a new compilation of them.

*Division II: Public Health and Welfare, Domestic and Foreign.*

This second division is concerned with the national public health service; the prevention of epidemics and the advancement of health; burial; medical statistics; medical examining and licensing; the traffic in food and in wine; control of apothecaries and veterinarians; questions of sewerage and drainage; the Red Cross; volunteer nursing. It handles also questions of state citizenship; treaties or agreements concerning colonies and possessions; freedom of travel; general welfare; emigration and immigration; matters affecting Germans living on the borders of other countries; the rights of (racial) minorities; questions as to foreigners and passports. It is responsible, moreover, for the accounts and the budget of the Ministry of the Interior.

*Division III: Education and Schools.* The third division has the duty of fostering science and learning, and developing scientific institutions and undertakings, such as the national Physical-Technical Institute. It is concerned also with such matters as the na-

tional service for state surveys, measurements, state boundaries and earthquake investigations. It is in charge of the national archives. It has the duty of fostering art and the theater, as well as of censoring films and combating obscenity in literature and art. Popular education, physical development, the education of Germans in other countries, and the welfare of the young, fall into the work of this division. The further duty is placed upon it of handling a central information bureau concerning war casualties and war graves.

Each of these divisions is controlled by a director or manager, with whom are associated a number of referees of various ranks.

Several special offices, services, or establishments are associated with the Ministry of the Interior. It must suffice here merely to list these organizations, with the briefest possible explanation concerning those whose names do not indicate their nature.

1. National Commissioner for Examining Elections.<sup>6</sup>
2. Central Office for the Structure of the German Reich.  
This office handles questions dealing with changes in state boundaries, the formation of new states, etc.
3. The National Art Guardianship.  
To mediate between the public authorities and the artist when acts of the former affect the latter.
4. Central Compensation Office.  
For concerns of former soldiers, exclusive of pensions and financial compensation.

As a part of the work of the Ministry of the Interior, yet separately organized, are the following officers, institutions, and organizations.

1. National Chairman of Elections.  
This officer, with a committee, examines, decides, and publishes the results of national elections.<sup>7</sup>
2. Service for the Compilation of Statutes.
3. Walter Rathenau Foundation.  
A gift from the mother of Dr. Rathenau, of his house, art treasures, and library, as a memorial and an educational aid.

<sup>6</sup> See the Constitution, Article 31, par. 4.

<sup>7</sup> See the national election law, 1924 revision, RGBI. 1924, I, pp. 159, 172, 173; sec. 8.



4. Final National Disciplinary Authorities.  
To decide cases of discipline of public officers.<sup>8</sup>
5. National Health Service and National Health Council.  
The former publishes the "National Health Gazette," and "Works of the National Health Service."
6. Commissioner for Volunteer Nursing Service.
7. National Emigration Office.
8. National Commissioner of Emigration.
9. United Service for Public Relief Agencies.<sup>9</sup>  
This is an administrative court of appeals, for cases arising out of controversies among public relief agencies.
10. Minority Service for Upper Silesia.  
A special service for the protection of the Polish minority in upper Silesia.<sup>10</sup>
11. National Chemical-Technical Establishment.  
This establishment attacks problems of general importance in chemistry, especially applied or technical chemistry, and related problems in physics, when asked to do so by the public authorities of the Reich or of a state, or upon request made by an industrial undertaking.
12. National Physical-Technical Establishment.  
For researches in pure and applied physics; standards of weights, measures, materials, etc.
13. National Institute for Seismographic Research.
14. National Archives.
15. National Service for State Surveys.
16. Central Direction of *Monumenta Germaniae Historica*.
17. Association for the Aid of German Learning.  
This association administers and distributes funds derived from public and private sources, for the purpose of assisting scientific research in many fields, including not only the "practical" sciences, but philosophy, philology, history, art, and theology.
18. Kaiser-Wilhelm-Association for the Advancement of Learning.  
This remarkable foundation, which was established in 1911 largely by private gifts, but has received considerable support from public grants by the Reich and several states, maintains twenty-three separate institutes or scientific agencies, including such diverse establishments as a biological

<sup>8</sup> See Chapter XI on Personnel.

<sup>9</sup> Although the German expression is "Heimatwesen" (parish affairs), the units served are not parishes alone, but other public relief agencies as well.

<sup>10</sup> See the agreement with Poland, of May 15, 1922 (RGBl. 1922, II, p. 237 ff.); especially Article 148.

station, an institute for experimental therapy, an institute for research in metals, an institute for the study of foreign public law and international law, and an establishment for research in psychiatry.

19. National Central Office for Reports on the Natural Sciences.
20. German Archive for the Welfare of the Young.

In addition to collecting material on the subject of the welfare of children and young persons, this agency arranges conferences and courses, distributes publications and bibliographies, etc.

21. Offices for the Examination of Films.
22. Central Information Service for War Casualties and War Graves.
23. National Commissioner for the Supervision of Public Safety and Order.

This Commissioner acts as an agent for gathering information as to political and other activities which may disturb public safety and order. He lays this information before the Cabinet, but has no executive powers.

**Ministry of Finance.** The Minister of Finance is assisted by a ministerial councillor and ministerial director in the Ministerial Bureau, two secretaries of state, and many other officers. His department publishes the following official gazettes:

National Salary Gazette

National Tax Gazette

Supplement to the National Tax Gazette

National Customs Gazette (two editions)

Service Gazette of the National Financial Administration (two editions)

The work of this Ministry is divided as follows:

*Division I (Central Division).* Subdivision 1B. Salaries, including local classifications; schedules regulating salaries and conditions of labor of officers and employees of the Reich; pensions and relief for public officers, their widows and orphans, and veterans; law of officers and general questions affecting public officers from the financial standpoint; budget of the general pension fund; allowances or increases, social care for public servants, credit and economic assistance for the same; care for public officers and other servants of the state, within and outside of the ceded and occupied territories; daily allowances, costs of travel and removal; official residences; execution of the salary classification law.

Subdivision IC. General national budget and individual budgets of national departments and services (with certain exceptions which are cared for by other divisions) ; financial legislation ; participation in legal and other measures taken by various branches of the national administration, when such measures have financial consequences ; budget system, accounting system and treasury system of the Reich ; simplification and economy in national administration ; limitation of the expenditures of the Reich and of the states ; financial affairs of the general agent for reparations payments, of the war debt commission, and of the reparations commission (with exceptions) ; general provisions in regard to delivery and performance (with exceptions) ; compensation to the states for state property lost in the war ; care of refugees ; care for persons expelled from the Rhine and the Ruhr districts ; budgetary affairs of states and localities ; financial equalization between Reich, states and municipalities.

Subdivision IH. Budget of the military forces ; budget of the national Ministry for the occupied territory ; administration of national estates and forests ; conclusion of financial affairs of the former army ; defense troops and colonial administration ; discharge and paying off.

*Division IA.* Budgets of the national Ministry of Traffic, the Ministry of the Post, the national printing office, matters of financial administration in regard to the German national postal service and the German national railway corporation.

*Division II.* Customs ; taxes on beer, acetic acid, matches, salt, playing cards, tobacco, wine, sugar, explosives ; the monopoly on spirits ; the law concerning sweetstuffs ; participation in commercial statistics ; participation in customs and commercial policies ; supervision of shipments into, out of, and through the Reich. General matters of treasury, accounting, building, and personnel, in the field of national tax administration. Personnel, organization, and general administrative matters ; officers, budget, treasury, accounting, and building matters, in connection with the administration of customs and consumption taxes.

*Division III.* Income tax, including tax deductions from wages and from the returns on capital ; corporation taxes ; property taxes ; tax on the increment of property ; national evaluation law ; inheritance tax ; turnover tax ; retail trade and production taxes ; decisions

concerning petitions for deductions; financial equalization between Reich, states and municipalities; tax equalization office for settlement with states and municipalities; statistics.

*Division IIIP.* Personnel, civil servants and appointive officers; also budget for the national Court of Finance, the state finance offices, and the finance offices; treasury and accounting methods; general matters of national financial administration, including districting, and supervision of the conduct of business; establishment of finance courts and of finance committees; examination of books and management; tax adjustments and remittances; buildings; business requirements.

*Division IIIR.* National tax ordinance; legislation concerning the Rentenbank; law concerning industrial burdens and payments; tax on house rents; capital transfers tax; tax on bonds; tax on bills of exchange; tax on motor fuels; promotion tax; insurance tax; tax on the returns from land; tax on increased values; taxes on races and lotteries; general legal matters, including international financial law, especially double taxation and legal remedies.

*Division IV.* National administration of buildings and construction.

*Division V.* Carrying out the Versailles Treaty, the London Agreement, general matters of reparation and restitution, etc. General financial questions affecting economic policy and food supplies, especially export and import; financial questions of the separated and occupied territories; preparation of national securities; matters of standards and values; the mint, exchange; banking matters; loans and debts; budget for the national debt; care for the interests of the Reich in industrial and mercantile undertakings; winding up the war organizations; foreign credits and foreign loans of the Reich; evaluation.

*Division VB.* Carrying out of the obligations in the economic domain, laid upon Germany through the Treaty of Versailles, insofar as they concern: The adjustment of claims and debts as against the formerly hostile Powers; the winding up of the German measures of repayment, and the handling of enemy property in Germany; mixed courts of arbitration; compensation to Germans in foreign countries and colonies, and to Germans driven out of the ceded territories; the delivery and the redemption of securities.

Personnel of the national compensation service for war damages, and of the national (claims) adjustment service; general financial and budgetary matters touching the work of the division.

The heads of the various divisions and subdivisions have quite different titles and positions. The most common title for the head of a division is director; for the head of a subdivision, manager (Dirigent).

The following <sup>21</sup> organizations, institutions, and services are to a greater or less extent under the control of the Ministry of Finance.

1. National Court of Finance.
2. State Finance Offices.
3. National Monopoly in Spirituous Liquors.
4. National Financial Issues Offices.
5. National Central Treasury.
6. National Depository for Coin Metals.
7. German War Debts Commission.

This is described <sup>22</sup> as an interministerial institution to handle certain matters arising from the Versailles Treaty, on the basis of an order of the national President, of July 31, 1919 (RGBl. p. 1363). It consists of representatives of the Ministry of Finance, the Foreign Office, the Ministry of Economics and the Ministry of Labor, and as needed, of economic experts. If occasion arises, other national departments are represented.

8. Remainders Administration for National Business.

For winding up the colonial central administration and other odds and ends of business resulting from the war.

9. National Compensation Service for War Damages.
10. National Adjustment Office.

Adjusts claims arising from pre-war business dealings between Germans and their late enemies, etc.

11. National Commissioner for Reparations Payments.
12. National Commissioner for the Conversion of <sup>23</sup> former Holdings of National Debt Securities.

The foreign organs for reparations payments and the like, which are established in Berlin on the basis of the London Agreement, are naturally associated, though not connected, with the Ministry of Finance.

<sup>21</sup> Most of these need no particular explanation; others are discussed elsewhere in this book.

<sup>22</sup> Handbuch für das deutsche Reich, 1926, p. 163.

<sup>23</sup> See RGBl. 1925, I, p. 137.

**Ministry of Economics.** This Ministry deals with those economic matters of concern to the Reich which are not handled by such special departments as the Ministry for Food and Agriculture, the Ministry of Traffic, and the Ministry of Labor. The Minister at the head of this Department is assisted by a secretary of state and a ministerial bureau director, as well as the requisite number of directors, managers, and referees. Two ministerial councillors are made the heads of services that deal respectively with: (a) Matters that concern the industrial and middle classes, handwork, the individual dealer, industry, industrial associations; and (b) such general matters as the budget, personnel, and organization of the Ministry and the authorities subordinate to it.

*Division I.* The representation of economic occupations; cartel systems; costs of production; price policy; questions of market conditions; economic consequences of social policy; users' and consumers' associations fund for the assistance of industrial enterprises; private insurance systems; systems of weights and measures; questions of standards and values; money, banking, exchange; general questions of the money market and of the credit needs of business; general questions of evaluation; financial relations to foreign countries; tax questions (national, state, and municipal) including participation in the drafting of new bills, and constant observation of the influence of the formal and material aspects of tax legislation upon the economic situation; statistics; economic questions of the Versailles Treaty and of the international agreements for its fulfilment; Swiss gold securities; economic questions of the occupied Rhineland and of the Saar territory; information; the press.

*Division II.* Trade and customs; ocean travel.

Under this division the following publications are issued:

German Trade-Archives: a journal of trade and industry.

International Signal Book. This gives the flag signals of all countries.

Official List of German Sea Vessels: with distinctive signals. Supplement to the International Signal Book.

Handbook for the German Merchant Marine.

Decisions of the German Superior Marine Office and of the Marine Officers of the German Reich.

Nautical Yearbook.

Hard Coal Shipments in Merchant Ships.

*Affiliated Organizations.* The following special offices, agencies, and services are connected with the Ministry of Economics:

1. National Statistical Service.

This service is assisted by a Council for Trade Statistics, composed of experts in agricultural economics, industry, and trade. Its publications are as follows:

Statistics of the German Reich.

Quarterly Reports of the Statistics of the German Reich. Abstracts from the larger work.

Monthly Information upon the Foreign Trade of Germany.

Statistical Yearbook for the German Reich.

Economics and Statistics (a periodical).

Statistics of Shipments upon German Railways.

The statistical service is divided as follows:

*Division IA.* Administration and administrative statistics; personnel and budget; judicial system; treasury; publication and printing; library; statistical conferences, congresses, and associations; statistics of crime and bankruptcy; statistics of schools and higher schools; steam-boiler explosions; statistics of elections and votes.

*Division IB.* General economic statistics and market notes:

Foreign statistics; reparations statistics; general economic questions; collection of material for the Index of Prosperity (Wohlstandsindex).

Collection and publication of economic information in the journal, "Economics and Statistics"; archive of magazines and newspapers; graphic representation; statistical yearbook.

*Division II.* Statistics of trade and commerce; export trade; general questions of the law affecting statistics; statistical information as to production; customs revenues; warehouse business; refineries; free districts and free ports; foreign trade statistics; deliveries under the Versailles Treaty; value of export and import shipments; balance of payments and related questions; monthly reports and publications; yearly volumes; state reports; yearbook; sea fishing; sea-floor fishing.

Commercial statistics (railways, shipments of goods upon German railways, quantity of motor fuels; trade in foreign motor fuels in the German Reich); internal navigation, and traffic upon inland water courses; sea navigation, shipwrecks and accidents, traffic and freight, etc.; statistics of produc-

tion (mining and kindred industries); agriculture (land under cultivation, crop conditions and harvests, livestock, cattle market); veterinary statistics; statistics of business enterprises; dividends and balances of stock companies.

*Division III.* Population and Social Statistics; census, births, deaths, suicides, marriages, mortality tables; medical statistics (causes of death, hospitals, diseases, etc.); statistics of occupations; agricultural and industrial operations; price statistics, wholesale index; statistics and index on costs of living; partnerships; statistics of chambers of commerce, labor and agricultural associations; statistics of building operations; wages and salaries; statistics of insurance against sickness and other social insurance; statistics of the industrial and mercantile courts and of the legal information offices; reports of inspectors of factories and mines; classified information as to housing and housing needs in various localities; statistics as to hours of labor, unemployment, etc.; statistics as to poverty and aid; movements of population; foreign trade.

*Division IV.* Statistics of Finance and Taxation. General financial statistics; finances of the Reich and of the states; budget statistics; financial statistics of municipalities and other public-law corporations; money and the money-market, banks, exchanges, saving banks; foreign statistics of finance and taxation, international financial equalization; statistics of direct taxes; taxes and economic matters; statistics of property taxes; income taxes; corporation taxes; statistics of the burdens on industry arising from the law to carry out the delivery of goods on the basis of the London Agreement; statistics of social income and social property; finances and index of welfare; tax burdens upon German economy; statistics of consumption taxes and transfer taxes (turnover tax; inheritance tax; taxes on sugar, salt, and other articles of consumption; statistics of taxes on the return from land, capital transfers, motor fuels, insurance, racing, lotteries, and promotion).

2. National Service for Survey of Ships.
3. National Supervisory Service for Private Insurance.

This service (which is assisted by an advisory council composed of experts from various German cities) performs the function indicated by its name; and in addition it publishes two or three times a year the "*Publications of the National Supervisory Service for Private Insurance*" containing reports, statistics, collections of legal and administrative provisions affecting insurance, and the like.

Special divisions of this service deal respectively with: Life insurance and insurance against sickness; accident and liability insurance; agricultural insurance undertakings; in-



surance on property; special branches of insurance. There is also a technical division which handles statistics, actuarial tables, etc.

4. National Economic Court.<sup>14</sup>

This court decides economic questions arising from the Versailles Treaty, in certain classes of cases:

Establishing a fair compensation or repayment for property to be delivered or returned to the formerly hostile Powers which the Reich is obliged to restore and in certain instances to expropriate;

Establishing a fair compensation for damages arising through dissolution of the relations of the allied and associated Powers;

Establishing compensation for damages to foreigners, colonials, and expatriated persons;

Establishing repayment for expenditures which were incurred in the occupied portion of the Reich for the support of the foreign forces of occupation; and establishing compensation for personal injuries incurred through the occupation of German national territory;

Deciding appeals from decisions of the National Equalization Service, and deciding questions concerning the cancellation or alteration of contracts according to paragraph 54 of the national equalization law.<sup>15</sup>

The court also decides cases arising from public regulation of economic matters, including cases of the following kinds:

Forfeiture of goods illegally imported; also compensation where the law fixes this;

Complaints against administrative measures which were taken in connection with the trade in base metals. (Refusal of permit for wholesale trade; prohibition of working);

Deciding appeals against awards which involve changes in such arrangements as make obligatory the supplying of electric power, gas and water;

Establishing the extent of the obligation for the forwarding of mail, laid by the postal administration upon individual aerial transportation companies; and the compensation for the same.

The court decides appeals against decisions of committees established on the basis of the national law against disturbing the peace.<sup>16</sup>

<sup>14</sup> See ordinance establishing this court, RGBI. 1920, p. 1167, and amending ordinances, RGBI. 1921, p. 1046, and RGBI. 1924, I, p. 155. See also Klinger, *Die Zuständigkeitsgebiete des Reichswirtschaftsgerichts und des Kartellgerichts* (latest edition).

<sup>15</sup> RGBI. 1926, I, p. 203.

<sup>16</sup> RGBI. 1920, p. 141; 1924, I, pp. 23, 381.

The court may also decide certain other cases involving economic questions, not regularly assigned to it, upon agreement of the parties concerned.<sup>17</sup>

The president and two senate presidents of the National Economic Court are also members of the elections court for the temporary National Economic Council. The decisions of the court are published in a series of volumes.<sup>18</sup>

The Cartel Court.

This court is connected with the National Economic Court, having the same president and some of the same members. Its function is to prevent "misuse of situations of economic power."<sup>19</sup> Its decisions are published together with those of the National Economic Court.

The principal classes of questions or cases which it decides are as follows:

Upon motion of the national Minister of Economics or the national Minister of Food and Agriculture:

Whether a contract or decision of a cartel is to be declared invalid because of endangering the general economic situation or the common welfare, or a specific method of executing such a contract or decision is to be prohibited;<sup>20</sup>

Whether contracting parties are to be permitted the general right to withdraw from contracts if these contracts have been made on the basis of trade agreements, or kinds of price fixing by enterprises or associations of enterprises, which are likely to endanger the general economic situation or the common welfare, by utilizing the advantages of a situation of economic power.

Upon motion of a party concerned:

Whether the notice<sup>21</sup> given by a member of a Cartel under Paragraph 8 of the Cartel Ordinance was permissible.

#### 6. National Superior Sea Service.

This is the highest deciding authority for cases arising from disasters at sea. It decides appeals from the decisions of the Sea Service as to the withdrawal of the permits of sailors, pilots, and ships' mechanics.<sup>22</sup>

<sup>17</sup> Section 3 of the ordinance establishing the court (cited above); also ordinance of February 18, 1920.

<sup>18</sup> Entscheidungen des Reichswirtschaftsgerichts und des Kartellgerichts.

<sup>19</sup> See ordinance creating it: RGBl. 1923, I, p. 1067.

<sup>20</sup> For the legal provisions under which these types of questions and cases arise see the Kartellverordnung, RGBl. 1923, I, 1067.

<sup>21</sup> Kartellverordnung, par. 8.

<sup>22</sup> RGBl. 1877, p. 549 ff.

## 7. National Commissioners for the Sea Services.

Appointed by the Minister of Economics; functions chiefly advisory.

## 8. National Inspectors for Examinations.

These are appointed by the national President. One inspects examinations of sailors and pilots; the other inspects examinations of ships' engineers and ships' mechanics.

9. Technical Commission for Sea Navigation, and Expert Committee for the Technical Education of Seamen.<sup>23</sup>

Technical Commission for Sea Navigation.

Presents opinions to the national Minister of Economics, upon his demand, concerning matters of sea navigation;

Makes suggestions to the Minister of Economics upon its own initiative, for the development of sea navigation:

Upon the request of other authorities or persons the Commission may present its opinions only with the consent of the Minister of Economics.

Expert Committees for the Technical Education of Seamen. The duties of these committees are:

To present opinions to the Minister of Economics, upon his demand, concerning the system of technical education for seamen and related questions;

To discuss all important questions touching the system of technical education and examinations for seamen;

The committees may present opinions upon the request of other authorities or persons, only with the consent of the national Minister of Economics. One committee deals with education in navigation; another, with the education of ships' engineers and mechanics.

10. Stock Exchange Committee.<sup>24</sup>

An advisory council chosen by the Reichsrat

11. Appeal Chamber for Cases from the Stock Exchange Court.<sup>25</sup>12. Appeal Commission concerning Fines for Prohibited Trading in Options.<sup>26</sup>13. National Commissioner for Permits for Exports and Imports. Settlement Office.<sup>27</sup>

## 14. National Commissioner for Coal Distribution.

Governs the production, distribution, and use of coal, gas, electricity, steam, hot water, and water supplies.

<sup>23</sup> See RGBl. 1925, II, pp. 714, 724.

<sup>24</sup> See law governing, RGBl. 1908, p. 215.

<sup>25</sup> See RGBl. 1908, p. 215, pars. 10, 17.

<sup>26</sup> *Ibid.*, pp. 73, 74.

<sup>27</sup> See Deutscher Reichsanzeiger, No. 295, December 17, 1925, for ordinances governing.

15. National Commissioner for Handwork and Small-Scale Industry.
16. Self Administering Bodies.

These bodies, which are all related to the Ministry of Economics by the nature of their interests and objects, are as follows:

1. National Coal Council.
2. National Coal Association.
3. National Potash Council.
4. Potash Examining Office and Potash Examining Office of First Instance.
5. Potash Appeal Office and Examining Office of Second Instance for the Income from Potash.
6. Agricultural-Technical Potash Office.

**Ministry of Labor.** The general duties of the Ministry of Labor are the enforcement and administration of labor laws in general, including special laws for the protection of labor; arbitration; unemployment relief; pensions and care for those injured in the war; the widows and orphans of veterans, etc.; social insurance and social care; housing and settlements.

It publishes a weekly journal called "National Labor Gazette" (Reichsarbeitsblatt); and an occasional periodical devoted to the care and education of veterans and their dependents (Reichsverorgungsblatt). It also maintains a bureau of information.

The Minister of Labor is assisted by a secretary of state, a ministerial bureau director, and heads of divisions and subdivisions, who bear a variety of titles.

The work of the Ministry is divided as follows:

*Division I.* General matters; administration of the department and of the subordinate offices.

Subdivision 1A. General business and administration not handled by Subdivision IB; personnel, budget, economic questions, organization.

Subdivision IB. Medical questions, especially medical care.

*Division II.* Social insurance.

*Division III.* Labor legislation, protection of labor, wages policy, and general questions of social policy.

Subdivision IIIA. Law of labor contracts; labor organization; adjudication of labor cases; adjustments.

Subdivision IIIB. Labor code; protection of labor, general questions of social policy; international labor legislation.

Subdivision IIIC. Wages policy.

*Division IV.* The labor market, arbitration, labor supply, unemployment insurance, unemployment relief.

*Division V.* Welfare work; social aid; housing settlements.

Subdivision VA. Social aid.

Subdivision VB. Housing and settlements.

*Division VI.* Charities legislation.

*Related Agencies.*

1. Labor Law Committee.
2. National Committee for Physicians and Hospitals.
3. Standing Committee for Municipal Housing.  
Subcommittees:
  1. Real Estate Credit.
  2. Questions of Organization and Technical Construction.
  3. Rent Law.
4. Standing Committees for State Settlements.
5. Permanent Council on Homesteads.
6. National Committee for the Care of the War Wounded and the Widows and Orphans of Veterans.

*Subordinate Authorities.*

1. National Insurance Office.<sup>28</sup>

This is the highest authority for supervising, deciding, and passing upon appeals in the domain of national insurance against accident, disability, and illness; the final instance for making decisions and passing upon appeals in the domain of employees' and mine-workers' insurance.

It publishes monthly reports (*Amtlichen Nachrichten des Reichsversicherungsamts*), and occasional volumes of decisions and information (*Entscheidungen und Mitteilungen des Reichsversicherungsamts*):

Division I handles matters of accident insurance; Division II, employees' insurance and illness and disability insurance.

2. National Court for Social Aid.<sup>29</sup>

This is the highest court of appeals in cases of social aid and relief. Its decisions are published from time to time (*Entscheidungen des Reichsversorgungserichts*).

3. National Labor Administration.

Together with the related "National Office for Labor Arbitration," this authority administers such matters as labor information, decision upon appeals, and functions bestowed upon it by law in the domain of labor market policy for subsidized and productive unemployment relief agencies. Its rates division makes decisions as to the en-

<sup>28</sup> RGBI. 1911, p. 509; 1924, I, p. 779.

<sup>29</sup> RGBI. 1922, I, 59.

forceability of rates agreements. Its functions include matters of safety, protection, hygienic conditions of labor, the work of children, youths, and women, the apprentice system, domestic labor, the supervision of labor, and of the observance of labor restrictions. It maintains an exhibit upon safety and hygienic labor conditions.

It participates in the publication of the National Labor Gazette, with supplements to the same; and it is responsible for the weekly Labor Market Advertiser (*Arbeitsmarktanzeiger*).

Related agencies are:

1. Administrative Council of the National Service for Labor Arbitration.
2. Committee on the Severely Injured.
3. Central Supervisory Office for the Manufacture of Explosives and Munitions.
4. Advisory Council of the Permanent Exhibit for the Welfare of Labor.
4. National Insurance Institute for Employees.
5. National Labor Fund.

The general paying and accounting agency for the national Ministry of Labor, the national Labor Administration, the national Insurance Office, and the national Court for Social Aid. It is also the central treasury for social aid in the Reich.

6. German Agent for Labor Questions in Upper Silesia.
7. Permanent Adjustment Agents.

These agents, who are appointed for districts, decide important controversies as to wages and rates; they also decide whether the settlements made by adjustment committees are binding.

8. Authorities and offices of National Social Aid.

There are fourteen principal offices devoted to this service; with many subordinate ones. The social aid thus provided includes orthopaedic and medical treatment.

**Ministry of Justice.** This Ministry handles national affairs which involve legal questions; and coöperates in the activities of other Ministries when legal questions of fundamental importance are concerned. It also keeps the penal record of persons of foreign birth, or whose birthplace is uncertain or cannot be located; and of juristic persons and associations of persons.

The immediate assistants of the Minister are a secretary of state and a ministerial bureau director.

*Division I.* Civil law, law of authorship and publication, law of personal status, international private law, organization of courts (with the exception of criminal courts); civil process; compulsory execution upon real property; law of bankruptcy and protest; voluntary adjudication; legal agency; judicial execution; costs and fees (except in criminal cases); judicial statistics (except for criminal cases); the protection of industry (patent law and procedure; standards of custom and taste, trademarks, protection against unfair competition); judicial education.

*Division II.* Criminal law; law of price fixing; military criminal law; organization of the criminal courts; criminal process; execution, fees and costs, in criminal cases; criminal law in the occupied and ceded territory; law of extradition; interstate criminal law; individual criminal cases not handled by Division IV; statistics of crime; penal record; remissions of fines and penalties; legal adjustments with Austria.

*Division III.* Law of trade, industry, partnerships, stock companies, stock exchanges, banks, securities and checks; law of internal navigation and sea navigation; private law of aërial navigation and railways; social and economic law; questions of depreciation of money and values; international law; legal questions concerning the Treaty of Versailles and the occupied and ceded territory (except criminal law).

*Division IV.* Public and administrative law. Politico-criminal questions, especially high treason, treason toward a state, espionage, war crimes. Matters touching the personnel and the administration of the Ministry, of the Reichsgericht, of the High Court of State for the Safety of the Republic, of the extraordinary courts, and of the national Patent Office; education of jurists in foreign countries; matters to which the Minister must attend personally.

Connected with the Ministry of Justice are the Reichsgericht, which is described elsewhere,<sup>39</sup> and the national Patent Office. The decisions of the Reichsgericht are not published by the government, but by a private firm, in a series of volumes entitled *Entscheidungen des Reichsgerichts*, with the sub-titles *Strafsachen* or *Zivilsachen*. The Patent Office issues a number of official publications, as follows:

<sup>39</sup> Chapter XIII.

The Patent News (Patentschriften).

The Patent Gazette (Patentblatt) with extracts from The Patent News.

The Patent Gazette (alone).

Extracts from the Patent News (alone).

List of Patents Granted in the Preceding Year.

Gazette of Patents, Models, and Designs (Blatt für Patent, Muster- und Zeichenwesen).

The Trademark Gazette (Warenzeichenblatt).

One division of the Patent Office handles annulments and complaints; the second is a registry division for trademarks and standards, and the international registration of trademarks.

**Ministry of Defense.** The work of this Ministry needs no special explanation. Its publications are:

The Army Order Gazette (Heeres-Verordnungsblatt).

The Navy Order Gazette (Marine-Verordnungsblatt).

Occasional publications on army sanitation (Veröffentlichungen aus dem Gebiete des Heeressanitätswesens).

The Minister of Defense is assisted by adjutants and referees. Associated with these in the first division of the Ministry are a head bureau and an information service. The other divisions are:

- |                      |                     |
|----------------------|---------------------|
| 2. National Defense. | 4. Law and Justice. |
| 3. Budget.           | 1. Army.            |
| 1. Army.             | 2. Navy.            |
| 2. Navy.             | 5. Library.         |
|                      | 1. Army Group.      |
|                      | 2. Navy Group.      |

*Command of the Army.* The Chief of Staff of the army is assisted by an Adjutant and a General Staff, with one civilian adviser. A Division on Army Development is under independent directorship. The organization of the remainder of this service is as follows:

1. Army Personnel Service.  
This includes questions of quarters, discipline, complaints, marriages.
2. Army Corps Service.
  1. Army division.
  2. Army organization division.
  3. Division for army statistics.



4. Defense; espionage.
5. Military peace-commission.
3. Army Administration Service.
  1. Division for Army Officers.
  2. Division for Army Quarters and Drill-Grounds.
  3. Division for Army Funds and Salaries.
  4. Division for Army Rations and Uniforms.
  5. Division for Army Building Administration.
4. Armaments Division.
  1. Weapons and munitions.
  2. Equipment.
  3. Ordnance service.
5. Inspection of Training and Education.
6. Inspection of Infantry.
7. Inspection of Cavalry.
8. Inspection of Artillery.
9. Inspection of Outworks and Fortresses.
10. Inspection of Communication Troops.
11. Inspection of Information Troops.
12. Inspection of Army Sanitation.
13. Veterinary Inspection.

Connected with the army service are also various liaison offices, whose function it is to manage the intercourse between the Inter-allied Military Control Commission and the German troops, authorities, and industrial undertakings subject to control; military pass offices; Protestant and Catholic religious organizations; military attorneys; a military library service; a remounting service; a Scientific Council on Army Sanitation; and military hospitals.

*Command of the Navy.* The Admiral who is chief in command is assisted by the usual staff, with which the following services are connected:

1. Personnel.
2. Engineering Officers.
3. Naval Medical Division.

The general organization of the naval service is as follows:

1. Naval Command.
  1. Naval Defense.
  2. Fleet.
  3. Training.
2. General Naval Service.
  1. Docks and Harbors.
  2. Administration of Docks and Harbors.

## 3. Naval Armaments.

## 4. Nautical Division.

This important division deals with surveys, sea-charts and maps, channels; scientific aspects of navigation, astronomy, meteorology, nautical instruments, publications, the protection of fishing. It publishes the following materials:

Charts of the German Admiralty (Die deutschen Admiralitätskarten).

Sea Handbooks (Die Seehandbücher).

Information for Sea Voyagers (Die Nachrichten für Seefahrer).

List of Lighthouses and Nautical Radio Service (Leuchtfeuerverzeichnisse und Nautischer Funkdienst).

## 5. Sea Transport Division.

Transportation of marines and army troops. Matters of international navigation.

## 3. Naval Administrative Service.

## 1. Division on administration.

## 2. General concerns of officers.

Law of officers, salaries, pensions, allowances to widows and orphans, etc.

## 3. Construction.

Ship building, maintenance, etc.

## 4. Naval Peace Commission.

Under the command of the navy are the organization of the fleet, and the naval policing of the North Sea and of the Baltic Sea near Kiel. Marine stations are maintained at both Kiel and Wilhelmshaven, with the requisite services of inspection, sanitation, and the like.

At Kiel is located the office of the Naval Commissioner for the Kaiser-Wilhelm Canal. Local administration and supply offices are found in several cities. At Lübeck, Bremen, Hamburg, Stettin, and Königsberg are service stations whose duties include: Matters of concern to merchant ships, especially local navigation and fishing grounds; nautical information and reports; administration of naval signal and radio-stations; the collection of material for sea charts and nautical books; executive functions in regard to matters of sea transportation; and (under the direction of the Ministry of Traffic) observation and removal of obstructions to navigation in German waters outside the national jurisdiction.

**Post Ministry.** The German postal and telegraphic service<sup>22</sup> is managed as an independent enterprise. It is under the direction of

<sup>22</sup> See law governing, RGBl. 1924, I, p. 287; also Constitution, Article 88.

the Post Minister, with whom an administrative council coöperates. The national printing office (Reichsdruckerei) is also under the Post Minister.

More than a dozen publications, most of them entirely technical in character, are published by the postal administration. Examples of these are:

Archive for Postal and Telegraphic Service.

List of Telegraph Offices in the German Commonwealth.

Price List for Telegrams.

The Post Minister is assisted by three secretaries of state, who are respectively in charge of various divisions of work; also a ministerial bureau director, the usual heads of divisions, and so on. Directly under the first secretary are the services of information and of organization.

The work of the Ministry is organized as follows:

*Division I.* Postal Service.

*Division II.* Telephone and Telegraph Construction.

*Division III.* Telegraphic and Radio Systems.

*Division IV.* Personnel (Excepting the various forms of social insurance handled by Division VI).

*Division V.* Financial and economic questions, postal checks; post office buildings.

*Division VI.* A special division for Bavaria.

The general treasury of the postal service is in Berlin. Local postal affairs are managed by the Directing Offices of the various districts into which the Reich is divided. The Administrative Council for the German National Postal Service is composed of seven members nominated by the Reichstag, seven by the Reichsrat, one by the Minister of Finance, five by the national Postal Service and nine chosen "from the domain of economics and commerce."<sup>22</sup>

A National Technical Telegraphic Service is located at Berlin. This service handles technical matters connected with the telegraph, telephone, and radio systems; including the examination and procuring of construction materials and apparatus, the furnishing of current, and so on. It publishes occasional reports.

<sup>22</sup> RGBI. 1924, I, p. 287 ff.

The national printing office prints official documents for the Reich and the states; but may also undertake work for municipal and other authorities and corporations; and even, under certain conditions, for private persons.

The Provident Association for the German National Post is a public law association possessed of legal personality. Its purpose is to provide additional protection beyond the ordinary legal pensions for retirement or disability, and pensions to widows and orphans. It is under the supervision of the Post Minister.

**Ministry of Traffic.** The functions of this Ministry are:

- The administration of the waterways of general traffic which have been taken over by the Reich; protection of national waters; sea signals and pilots; matters of internal navigation and of traffic upon watercourses; development of water craft;
- In respect to aviation: Legislation; international aërial traffic; development of lines of aërial traffic; licensing, inspecting; security of aëroplanes; aërodromes; general technical and industrial matters; statistics; administration of the national property;
- In respect to automobile traffic and other street traffic: Legislation concerning commerce in motor fuels; technical competitions; automobile associations; questions of raw materials for motor fuels; general traffic by driving and cycling; highway construction and maintenance;
- In respect to railways: Administration of functions bestowed upon the Cabinet by the Railway Law<sup>83</sup> (supervision of the German Railway Association; administration of national railway property; representation of the concerns of the railways before Parliament and foreign countries); exercise of the rights of eminent domain bestowed upon railroads; railway legislation; supervision of private railways of general traffic according to Articles 90, 91, and 95 of the Constitution.

This Ministry publishes a map of the navigable waterways in Germany; an occasional gazette concerned with traffic on waterways, by aëroplane, and by motor-vehicles; and a weekly bulletin of information for aëroplane travellers.

The Minister of Traffic is assisted by a ministerial director in charge of the head bureau, and other ministerial directors and ministerial councillors in charge of the various divisions. There appears to be no secretary of state in this department.

<sup>83</sup> RGBI. 1924, II, p. 272, Section 31.

The following advisory councils are appointed to assist in various capacities in the work of the Ministry of Traffic:

1. Advisory councils on waterways.<sup>34</sup>
2. Advisory councils on aeroplane and motor vehicle traffic.
3. National Railway Council,<sup>35</sup> with a standing committee. Advises on railway matters and rates.
4. Industrial-technical council.

The work of the department is divided as follows:

*Divisions for Watercourses, Aërial, and Motor Vehicle Travel.*

- WI. Division for technical construction connected with waterways.
- WII. Administrative division. Matters of organization, law, and administration; motor vehicle traffic; budget; personnel.
- WIIa. Traffic division. Internal navigation and traffic; policing of streams and channels; taxes and rates; advisory councils on watercourses; international river commission.
- WIII. Division on water craft, machines, and electricity.
- L. Division for aërial travel.

In other matters the administration of the waterways taken over by the Reich according to Article 97 of the Constitution is left temporarily to the authorities already existing in the states. The Reich bears the costs of this service, which is directed by the national Minister of Traffic. The establishment of national authorities is anticipated.

*Subordinate Agencies.* The following agencies are subordinate to the Ministry of Traffic:

1. German Naval Observatory in Hamburg.
2. National Canal Service in Kiel.

Under this are waterway services in two other cities, and a waterway mechanical service connected with the Kaiser-Wilhelm Canal.

3. Neckar River development service in Stuttgart.
4. Direction of the national waterway protection, in Berlin.

*Railways Divisions.*

- EI. Administrative division.
- EII. Technical division. Questions of management and technical construction; mechano-technical and electro-technical matters.

<sup>34</sup> Constitution, Article 98.

<sup>35</sup> Article 93. Executory ordinance, RGBI. 1922, II, p. 77.

**Ministry for Food and Agriculture.** This Ministry handles matters affecting agriculture, food, forests, and fishing. It publishes occasional studies on "Nutrition of the Populace" (Volksernährung); and "Reports on Agriculture; New Series."

The Minister has the personal assistance of a higher administrative councillor. Directly under the secretary of state are placed affairs of personnel, budget, general questions, interior service; national ministerial questions. A ministerial bureau director and the usual heads of divisions also serve this department. A central bureau supplies information.

The organization of the Ministry for Food and Agriculture is as follows:

*Division I.* General questions of agricultural production and of food; price fixing; cartels; cereals, potatoes, sugar, malt, yeast, spirits, fruit, wine, cattle breeding, meat, tallow, dairying; fertilizers; horticulture; war against pests; agrarian statistics; agricultural tax questions; agricultural labor problems; forestry and timber.

*Division II.* Policies of customs and trade agreements; agricultural occupational representation; agricultural associations and credits; rural improvement and betterment; the occupied territory; carrying out of the peace treaty; fodders; fishing.

*Affiliated Organizations.* The following commissions, committees, and councils are connected with the Ministry:

1. German scientific commission for sea investigation.
2. Expert council on fodders.
3. Commission to judge fodder mixtures.
4. Scientific special commission for fodder mixtures.
5. National committee for the development of scientific fertilization.
6. National committee for the application of lime to soil.
7. National committee for technique and agriculture.
8. National committee for the cultivation of swamp lands and the reclamation of waste lands.
9. National committee for food investigation.
10. Council for wine production and wine trade.
11. Council for the production of fruit and vegetables.
12. National council on forestry.
13. National committee on the timber trade, the sawmill and paper pulp industry.
14. National board of guardians for the stations for dairy husbandry.

The following institutions are also placed under this Ministry:

1. National Biological Institute for Agriculture and Forestry.

An institute for scientific experimentation in such researches as promise practical results for the development and improvement of agriculture and forestry, particularly horticulture, plant protection, and soil bacteriology. It publishes, in addition to occasional pamphlets and leaflets, a monthly periodical: "Reporter for the German Horticultural Service" (Nachrichtenblatt für den deutschen Pflanzenschutzdienst); and the following reports:

Works of the National Biological Institute for Agriculture and Forestry.

Communications from the National Biological Institute for Agriculture and Forestry (annual reports).

Bibliography of Literature on Horticulture.

2. Research Institute for Farms and Settlements. Devoted more particularly to the question of education for the higher ranks of administrative service in this field.
3. A special "Organization of war-and-reconstruction economics" supervises the trade in fertilizers that contain ammonia and phosphoric acid.<sup>88</sup>

**Ministry for the Occupied Territory.** The temporary character of this Ministry makes an extended treatment of its organization and work unnecessary. It is organized into two divisions, which handle, respectively, political and economic matters, and administrative affairs.

In Coblenz are located:

1. The national Commissioner for the occupied Rhineland, who represents the special interests of the district before the Interallied Rhineland Commission.
2. The national Property Administration for the occupied Rhineland, which carries out the agreements concerning the Rhineland, in regard to the quarters and maintenance of the army of occupation in the formerly occupied territory.

**Conclusions.** Even the cursory view of German national departmental organization, to which the present study is necessarily limited, permits certain conclusions to be drawn. Possibly the most noticeable single feature of this organization is the disparity of titles among persons occupying positions of exactly similar

<sup>88</sup> See RGBI. 1917, p. 427; 1918, p. 474.

nature. Thus, in the Foreign Office, all division heads occupy the position of *Leiter*; five of these are ministerial directors while one is a manager (*Dirigent*). In the Ministry of Finance, the heads of Divisions I, II, IV, and V are called *Direktor* rather than *Leiter*; the head of Division III alone is called *Abteilungsleiter*. These division heads are all of one rank, however; namely, that of ministerial director. In the Ministry of Labor, of six main divisions, four heads have the title of *Direktor*, two, that of *Dirigent*. The first four are all of the rank of ministerial director; the other two, of the rank of ministerial councillor. Of seven subdivisions, two heads have the title of *Direktor*; one, that of *Dirigent*; four, that of *Leiter*. All are of the rank of ministerial councillor, except the two first-mentioned, who are ministerial directors.

These examples suffice to show that there is no consistent nomenclature for the heads of divisions and subdivisions.

Even less consistency appears in respect to the subordinate positions. For example, the "referees" in the departmental divisions and subdivisions of the Ministry of Labor alone are of eight different ranks. While this situation is doubtless to a certain extent accidental and "natural," since various positions and titles have been added to the service from time to time with more thought of their individual nature than of their exact relationship to other parts of the organization, and men have worked their way up in the service in different ways and have been chosen from different ranks to occupy higher positions, yet there can be little doubt that in the interests of scientific organization it would be an improvement if every division head were given the same title and the same rank, and so on down the ladder.

There appears an occasional lack of logic in the distribution of work among the divisions and subdivisions of a department, or among different departments. Thus, it is difficult to understand why the same division of the Foreign Office which handles matters concerning the United States should not also handle matters concerning the Philippines; or why the education of seamen, which is supervised by the Ministry of Economics, should not be placed under the division for Education and Schools in the Ministry of the Interior. Some of these faults, like the first example given, would seem to interfere quite seriously with the efficient conduct of business; while others, like the second example, are unsatis-



factory from the point of view of scientific organization, but otherwise probably innocuous. The reader will note, however, that these apparently illogical distributions of function are relatively rare.

Much the same thing may be said in regard to the occasional overlapping of functions. In this connection it should be remarked that the German ministries are especially fortunate so far as the possibilities of change and improvement are concerned. Since organization is effected by administrative rather than legislative action,<sup>37</sup> and reorganization or alteration is accomplished in the same way, the capacity for making improvements which will add to the working efficiency of any department or division thereof is always present. Wasteful overlapping or duplication, or awkward and illogical distribution of function, and even inconsistent official nomenclature and ranking (subject to any limitations which the Law of Officers may impose) can be corrected at any time when such correction appears necessary or advisable.

That the Cabinet is aware of the possibility of improving the administration on both the business and the organizational sides, is shown by the fact that it has asked the National Commissioner of Economy, who is also the President of the Court of Accounts, to examine the general budget, and the budget management of the individual ministries, and to express his opinion as to the results of the examination. Moreover, he is to make suggestions for economy in the budget, economy and simplicity of administration, decrease of personnel, and more businesslike management of income.<sup>38</sup> This is not the only example of the kind. Both public and private bodies in Germany have felt long the need of changes in the governmental administrative organizations, and there is a considerable literature on the subject. For some time past a committee of representatives from the various national ministries has been at work on a plan for 'bureau reform,' which it is hoped will point the way to extensive improvements.<sup>39</sup>

Finally, an American observer cannot fail to be impressed by the way in which special boards, commissions, evaluating, judging

<sup>37</sup> See Chapters III-V.

<sup>38</sup> See *Handbuch für das deutsche Reich*, 1926, p. 243.

<sup>39</sup> See *Die Büroreform in der Verwaltung*, by Ministerialdirektor Dr. Brecht, in *Deutsche Juristen-Zeitung*, May 1, 1926.

and deciding authorities, are related to the various administrative departments. With very few exceptions—notably the National Bank, the Court of Accounts, and to a certain extent the various economic enterprises<sup>40</sup> which are managed independently and controlled by special methods—practically every public administrative function performed by the Reich and every agency entrusted with such a function, will be found under the more or less complete control of one of the Ministries, or at least in some definite relation to it. The superiority of this system to the custom in the United States of appointing independent commissions and agencies having no organic connection with any administrative department (such as the Federal Reserve Board, Federal Trade Commission, Interstate Commerce Commission, United States Shipping Board, United States Tariff Commission, Alien Property Custodian, World War Foreign Debt Funding Commission)<sup>41</sup> can hardly be disputed.

<sup>40</sup> Even these are related to the Cabinet through budgetary and possibly appointive control and the powers of consent of the Minister of Finance. (See National Budget Law of December 31, 1922, RGBL 1923, II, p. 17 ff. Sections 48, 110, 111.)

<sup>41</sup> Other important agencies in the United States which are not related to or controlled by any government department include the Employees' Compensation Commission, Federal Power Commission, United States Railroad Labor Board, and some twenty other organizations. For a complete list, see *United States Daily*, March 4, 1926, p. 16.

## CHAPTER VII

### REVENUE AND PROPERTY ADMINISTRATION

**Financial Administration Before the War.** In no field of German administration have there been greater changes since the war than in that of financial administration. The Constitution of 1871 gave to the Empire exclusive legislative authority over the taxes assigned for its own purposes, including the entire customs system, as well as the taxation of salt, tobacco produced in the federal territory, domestic brandy and beer, and sugar and syrup prepared from beets or other domestic products.<sup>1</sup> Gradually certain other imperial taxes were introduced, so that by the outbreak of the war we find the following system in effect:

Taxes on income and property were fixed by the individual states. Although the Empire had power to levy direct taxes, it restricted itself (except for such taxes on trade, traffic, and transfer as resembled taxes on property) to taxing trade, traffic, transfer, and consumption by means of customs duties and internal revenue taxes. The only exceptions were the national defense levy and the capital increment tax.<sup>2</sup>

In so far as the expenses of the Empire were not covered by the above taxes and by those from the railway, postal, and telegraph systems, they were to be met by contributions from the several states in proportion to their population.<sup>3</sup>

The Empire had no separate financial administration: the administration and collection of customs duties and of the taxes on articles of consumption were left to the individual states or their local governing bodies.<sup>4</sup> Imperial supervision as to the observance of legal methods in carrying out the national tax system

<sup>1</sup> Constitution of 1871, Article 35.

<sup>2</sup> Material for a study of Germany's economy, currency, and finance. By order of the German Government, p. 87 (Berlin, 1924). See also Albert Hensel, *Steuerrecht* (2 ed. 1927), p. 5 ff.

<sup>3</sup> Constitution of 1871, Article 70.

<sup>4</sup> *Ibid.*, Article 36.

was effected through special imperial officers, who acted in coöperation with the customs or tax officers and the directive authorities of the several states.<sup>4</sup> By this system the states raised and administered not only their own taxes, but also those of the central government in their own names, except for the audit supervision of the Empire.

**Financial Administration During the War and the Transition Period.** Although the expenses of the war were to a large extent financed through loans, other factors, such as the shortage of goods with consequent profiteering, led to the war profits tax law. This law subjected to national taxation increased income, capital increment, and even to a certain extent capital itself. Other duties and taxes were levied, so that soon the Reich had taken over to itself most of the main sources of revenue. As a result of the difficulties that arose regarding the assessment and collection of taxes, an imperial finance court was established at Munich in 1918. Gradually the tax burdens became so heavy that "they would have been insupportable if the assessment and collection of the taxes had not been regulated on a uniform basis."<sup>5</sup>

As a result of the very heavy national debt, the expense and uncertainty of administering the taxation system through the agency of the states, and the inequality of tax burdens resulting from lack of uniform methods of valuation,<sup>6</sup> the new Constitution laid the basis for a much greater degree of direct tax administration by the Reich than had been established by the Constitution of 1871. It gave the Reich exclusive power of legislation over customs, in-

<sup>5</sup> Material for a study of Germany's economy, etc., p. 87.

<sup>6</sup> In the report of the Reichstag committee concerning the draft of the new national tax code, Burlage, the reporter of the committee, said, "The heavy debt burden of the Reich, to whose covering the greater part of the new taxes are obligated, brings such a high degree of national interest in the administration of these taxes, that the new national tax code must be shaped accordingly. Centralization is here the best organization. The administration of the national taxes through the states would be expensive and difficult and at the same time would give occasion for unfruitful friction with the national authorities.

"Especial weight must be given to the consideration, that the inequality in tax valuation hitherto existing in the Reich may . . . be overcome only when the valuation lies in the hands of a uniformly organized national authority."—*Verhandlungen der verfassungsgebenden Nationalversammlung*, Band 320, p. 2611 ff.

cluding uniformity in customs and commercial districts, and the free transit of goods; and it provided specifically for the administration of customs and excises by the national authorities, after a reasonable transition period.<sup>7</sup> The Reich received the power of legislation as to taxes or other revenues which it might claim in whole or in part for its own purposes;<sup>8</sup> and the power to prescribe by law fundamental principles with respect to the imposition and collection of state taxes in order to safeguard important social interests, or in order to prevent:

1. Prejudice to the national revenues or the commercial relations of the Reich.
2. Double taxation.
3. Burdening the use of public means of communication and public establishments with fees which are excessive or which impede traffic.
4. Discriminatory taxes upon imported goods as against domestic products in interstate or local commerce.
5. Export premiums.<sup>9</sup>

The Constitution furthermore requires the regulation by national law of the following matters:

1. The organization of the tax administration of the states, insofar as this is requisite to the uniform and impartial execution of national tax laws.
2. The organization and powers of the authorities empowered to supervise the execution of the national tax laws.
3. Accounting with the states.
4. The reimbursement of administrative expenses incurred in the execution of the national tax laws.<sup>10</sup>

Other constitutional provisions dealing with taxation give to religious associations organized as public corporations the right to levy taxes on the basis of the civil tax lists in accordance with provisions of the laws of the states;<sup>11</sup> provide that the financial needs of the states must receive due consideration if the Reich lays claim to taxes or other revenues which formerly belonged to the

<sup>7</sup> Constitution, Articles 6, 83, 169.

<sup>8</sup> Article 8.

<sup>9</sup> Article 11.

<sup>10</sup> Article 84.

<sup>11</sup> Article 137.

states;<sup>12</sup> and stipulate that in the administration of national taxes by national authorities, the special interests of the states as to agriculture, commerce, trade and industry shall be safeguarded.<sup>13</sup>

Acting upon its constitutional authority, in 1919 the Reich took into its own hands the administration of the entire national tax system. A uniform tax code was established, which not only set forth the material law, but also governed the entire financial procedure.<sup>14</sup> Further laws have considerably developed the system of national taxation and tax administration.<sup>15</sup> The following pages will describe the operation of the system at present.

**Present Day Financial Administration.** At present the Reich administers not only all the taxes and customs which appertain to the national treasury; but several others which, though nominally national taxes, are turned over to the states and municipalities *in toto*, except for a small deduction to cover the costs of collection.<sup>16</sup> Moreover, it exercises a very great degree of control over the states and municipalities in respect to tax regulation and tax administration. It is even empowered by law to administer the taxation systems of the states and municipalities if they so desire.<sup>17</sup>

According to the latest national law which regulates the tax distribution between the Reich, the states, and the municipalities,<sup>18</sup> the states and municipalities are authorized to raise taxes accord-

<sup>12</sup> Article 8.

<sup>13</sup> Article 83.

<sup>14</sup> Reichsabgabenordnung of December 13, 1919, RGBI. pp. 1993-2100, hereafter cited as RAO.

<sup>15</sup> The more important of these laws are: Law of January 3, 1920, RGBI, p. 45; of December 22, 1920, RGBI, p. 2114; of July 20, 1922, RGBI, I, p. 607; of July 15, 1922, RGBI, I, p. 610; two emergency decrees of December, 1923, which placed the fiscal system of Germany on a gold basis; the Income Tax Law and the National Valuation Law, of August 10, 1925, RGBI, I, p. 89, and RGBI, I, p. 214; an ordinance of March 11, 1926, supplementing the national valuation law, RGBI, I, p. 151; a law of April 27, 1926, concerning the distribution of taxes between the nation, the states, and the municipalities (Finanzausgleichgesetz) RGBI, I, p. 203; temporary regulation of April 9, 1927, RGBI, I, p. 91.

<sup>16</sup> Bekanntmachung der neuen Fassung des Gesetzes über den Finanzausgleich zwischen Reich, Ländern und Gemeinden (Finanzausgleichgesetz) vom 27 April, 1926. RGBI. 1926, I, p. 203 ff, Sections 41, 42, 36.

<sup>17</sup> RAO. Section 19, and Finanzausgleichgesetz of April 27, 1926.

<sup>18</sup> Law of April 27, 1926, Reichsgesetzblatt, Vol. I, p. 203 ff, as amended by a law of April 9, 1927, RGBI, I, p. 91 ff.

ing to state laws insofar as they do not contravene the national constitution and national law (Section 1). The claim of taxes for the Reich excludes the raising of like taxes by the states and municipalities, unless a national law prescribes otherwise; and the levying of increases upon the national taxes by states and municipalities is only permitted through national legislative authorization (Section 2). State and communal taxes which tend to injure the tax income of the Reich are not to be raised, if they interfere with the predominant interests of national finance. In general, new tax projects of the states and municipalities must be laid before the national Minister of Finance for approval (Section 5). Differences of opinion between a state administration and the national Minister of Finance as to whether a given provision of a state tax law is in harmony with the national law, are decided by the National Finance Court; while a question as to whether state or municipal taxes are appropriate, whether they injure the tax income of the Reich, or whether the interests of national finance are in opposition to the raising of the tax, is decided by the Reichsrat (Section 6).

The states are given the right to raise land and building taxes, which they may wholly or partially give over to the municipalities (Section 8). The law deals in some detail with the relationships which exist between the state and the municipalities in regard to taxation (Sections 8, 9, 10, 11, 12). The states may raise a motor vehicle tax (Section 13), but the national law prescribes that it shall be used for the benefit of public highways. The municipalities, with the consent of the state administration, or with the consent of their supervisory authorities, may raise a tax on the local use of beer (Section 15, as amended by law of April 9, 1927, Section 2). The states, or in accordance with state law, the municipalities, may levy taxes on increased value at the time when property is sold, under specific limitations (Section 18). The national Cabinet shall issue, with the consent of the Reichsrat, more detailed provisions concerning the principles which require a common regulation, especially in order to avoid double taxation (Section 13, as amended by Law of April 9, 1927).

The tax distribution law specifies the extent to which the states shall participate in the taxes raised by the Reich,<sup>10</sup> the methods by

<sup>10</sup> It is interesting to note in this connection that the income of several national taxes, including the land value tax, the motor vehicle tax and the race track gambling tax, are given over entirely to the states and their

which the income taxes are to be apportioned, the conditions under which the states and communities may raise additional taxes, and the circumstances under which the taxes raised by the Reich shall be turned over to the states and municipalities.<sup>20</sup>

If the Reich requires the states and municipalities to assume new functions, it must provide the means for enabling them to do so (Section 54). If individual states are forced to incur extraordinary expenses because of national contracts, laws, or administrative measures, the Reich assumes the costs or makes especial provisions by which they can be met (Section 55).

The Reich guarantees to the states, under conditions fixed by law, a portion of the income tax, equal to the sums which the states have hitherto derived from this tax. In case a state considers that this guarantee is not properly fulfilled, it petitions the national Minister of Finance for an increased apportionment. If the state authorities and the Minister of Finance cannot reach an agreement on this matter, the Reichsrat decides (Section 59). The Minister of Finance and agencies authorized by him are empowered to demand from the state and municipal authorities information concerning the state and municipal taxes, and to investigate their budgets and yearly accounts in order to determine whether each state and municipality is bearing its fair share of the burdens of government (Section 61).

An example of the way in which tax distribution is regulated by law is found in the following provisions of a recent statute:

1. In order to permit the states and the communes to be in a position to fulfil their functions, especially their social and cultural functions, if their proportion of the income tax, the corporation tax and the turnover tax in the total for the fiscal year 1927-1928 is less than 2,600 million Reichsmarks, the amount lacking is to be placed in the national budget.

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municipalities except for the 4 per cent deducted by the Reich to pay the cost of administering them. However, national law regulates the use of certain of these taxes.

<sup>20</sup> For greater details see Sections 21-53 of the law. Albert Hensel, *Steuerrecht* (1927) (*Enzyklopädie der Rechts- und Staatswissenschaft*, XXVIII), p. 25, gives a summary statement of the distribution between the Reich and the States. For the problems connected with tax distribution between the Reich and the states and communes see *Finanzausgleichsprobleme* by Popitz, Knorr, usw. (1927); in general see Hensel, *Der Finanzausgleich im Bundesstaat und seine staatsrechtliche Bedeutung* (1921).



2. Out of the returns from the income tax, the corporation tax, and the turnover tax, there will be distributed for the fiscal year 1927-1928 a grant from each of 450 million Reichsmarks, according to the provisions concerning the division of the turnover tax.

\* \* \* \*

4. In distributing to the communes the income tax, the corporation tax, and the turnover tax, the states should give especial consideration to the situation of the communes or communal associations with weak taxing ability, in so far as their necessities demand higher burdens for cultural and social purposes.

After section 4 the following new provision is inserted:

Section 4a.

1. The states are bound, in their provisions concerning their own taxation of real estate, concerning the estimate of the share of the communes in the national taxes, and concerning the taxes of the communes and communal associations for their own purposes, to take care that the increased revenues from the assignment from the income tax, the corporation tax, and the turnover tax . . . shall be applied for the lowering of the taxes on land and buildings and the trade taxes. . . .<sup>21</sup>

**Sources of Revenue.** The chief sources of public revenue in Germany are as follows:

Fees for official services.  
Revenues from public enterprises.  
Income from public property.  
Revenues from taxes, customs, and excises.

The first three of these sources of income are administered in connection with special functions, and involve no particular governmental or administrative problems aside from these functions. Only the last mentioned source of income is of much significance for the purpose of our study, for with regard to it alone, an elaborate administrative machinery has been built.

The revenues from taxes, customs, and excises fall into two large divisions:

1. The income, property, and commercial taxes.
2. The customs and excises.

<sup>21</sup> Gesetz zur Übergangsregelung des Finanzausgleichs zwischen Reich, Ländern, und Gemeinden, RGBl. 1927, I, p. 91.

The income, property and commercial taxes, although they vary considerably from year to year, nearly always include the following: Stock exchange tax, income tax, property tax, unearned increment tax, corporation tax, tax on the interest from capital, inheritance tax, turnover tax, race track gambling tax and lottery tax, motor vehicle tax, insurance tax, capital transfer tax, and increase of land value tax.<sup>22</sup>

The customs and excises usually include: Coal tax, salt tax, explosives tax, sugar tax, tobacco tax, beer tax, champagne tax, wine tax, mineral water tax, and playing card tax.

Although all these taxes are administered by national authorities, in several instances the Reich does not retain the entire proceeds of a tax. Thus, it retains only a part of the revenues from the income tax, the corporation tax, and the turnover tax; the states also participate in the returns from these taxes, and in some of them the communities have a share. From several other taxes the nation receives only four per cent for administration, the balance going to the states or to the states and the localities. These are: the tax on the increase in land values, the motor vehicle tax, and the race track gambling tax.<sup>23</sup>

**National Financial Authorities.** When the Reich took over the national financial administration in 1919, the problem of personnel was a pressing one. At this time there existed only a few national officers concerned with tax administration, such as those connected directly with the Ministry of Finance and those who supervised the collection of customs and other taxes. It became necessary, therefore, to take over into the national service most of the personnel of the state tax administrations, through which national taxes had previously been administered. Upon the basis of Article 46 of the Constitution, which empowers the national Pres-

<sup>22</sup> For certain functions of tax administration, the tax on the interest on capital does not belong in this list. Reichfinanzhof Sammlung, etc., V, p. 19. A summary of the taxes of the Reich as of April, 1927, is found in a group of tables accompanying Hensel's *Steuerrecht*. A very brief description of the taxes of Germany, national, state and local, and the laws and ordinances governing them, is found in Lympius, *Die Verfassung und Verwaltung in Preussen und im deutschen Reich*, p. 335 ff. See also the excellent chapter, *Finanzen*, in de Grais, pp. 171-308. For a more detailed study it is necessary to consult the particular laws governing each tax.

<sup>23</sup> *Finanzausgleichsgesetz*. For the distribution, see Hensel, p. 25.

ident to delegate his power of appointment to other authorities, the President empowered the Minister of Finance to take over officers of the state financial administration into the service of the Reich,<sup>24</sup> to take into the service of the Reich the presidents of the state finance offices, officers who on September 30, 1919, were entrusted with the administration of the national taxes, and other officers who in any manner were entrusted with the administration of state taxes.<sup>25</sup>

The national law requires that all officers employed by the financial authorities shall have especial professional training. They are obliged to maintain the strictest secrecy as to the property situation or business relationships of taxpayers; and they are forbidden to use information obtained in the course of their official duties for their own personal or business advantage. These provisions are enforced by the liability to criminal process.<sup>26</sup>

There are two principal groups of national taxation authorities: namely, the authorities which administer the taxes, and the tax courts.

Tax administration is handled directly by the ordinary district finance offices, together with the tax committees, valuation committees, and treasury and accounting services connected with them. Almost coördinate with these offices are special divisions of the state finance offices to handle customs and excises, under which are subordinate customs and excise offices. These are the primary local authorities.

Above the district finance offices are the state finance offices, with which are associated superior valuation committees and superior treasury and accounting services. The state finance offices are largely supervisory and controlling authorities.

Finally, at the head of the system of tax administration stands the national Minister of Finance, who is assisted by an advisory valuation committee and the central accounting office of the Ministry. The Finance Ministry is the central controlling authority for tax administration.

Side by side with the state finance offices stand the tax courts, which have original jurisdiction in the majority of suits over tax

<sup>24</sup> Verordnung von September 15, 1919. Reichsgesetzblatt, p. 1708.

<sup>25</sup> Verwaltungsordnung, September 29, 1919, Amtsblatt der Reichsfinanzverwaltung, 1919.

<sup>26</sup> RAO, Sections 9, 10, 376, as amended by Law of 1925, RGBl. I, p. 389.

questions. Above them, as a final appellate authority, and also as the court of original jurisdiction in certain affairs (such as a difference of opinion between the national Minister of Finance and the state administration over the question whether a state tax provision is compatible with national law) stands the National Finance Court located at Munich.

These various agencies and authorities will be discussed in the order in which they have been mentioned above.

**Duties of the Finance Offices.** The local finance offices, of which there are nearly one thousand, constitute the foundation of the entire tax administrative system of the German nation. There is scarcely a question in all tax administration that they do not have to decide in the first instance. As local administrative authorities they have to administer all the national taxes except customs and excises,<sup>27</sup> which are handled by the special divisions of the state finance office called head customs offices.<sup>28</sup> In addition to their fundamental duties, the finance offices may be required to administer any national or state property located in their districts. They may also, at the option of state or municipality, be charged with the administration of state taxes, and other public-legal taxes, especially church taxes.<sup>29</sup>

Although the general course of the work of the local finance offices is directed by the state finance offices, in certain respects the national Minister of Finance controls the former directly. He fixes the districts of the various offices, after consultation with the highest financial authorities of the states. He determines the sphere of business of the finance offices, and may limit certain offices to the administration of particular taxes.<sup>30</sup>

The participation of local authorities and agencies in the taxing process is provided for in various ordinances. The municipal police and other local authorities, as well as the authorities of

<sup>27</sup> Geschäftsordnung für die Finanzämter, Section 1, hereafter cited as FGO.; Amtsblatt der Reichsfinanzverwaltung, 1925, p. 127.

<sup>28</sup> These head customs offices supervise subordinate customs offices. Naturally, many of these offices have practically nothing to do with customs in the sense of import and export duties, but collect excise or consumption taxes. A special division of the state finance office supervises the head customs offices.

<sup>29</sup> RAO. Section 19; FGO. Section 1.

<sup>30</sup> RAO. Section 21.

larger territories, including the state itself, must assist in the work of taxation upon request from the finance authorities, whose instructions they are bound to follow.<sup>31</sup> An ordinance of 1924<sup>32</sup> gives the municipality a voice in the assessment of taxes. Before the assessment is made of income taxes, property taxes (not including the inheritance tax), and turnover taxes, the finance office must hear the municipal authority who is competent to speak for the taxpayers. The chief official representative of the municipality, his deputy, or a special commissioner appointed by the municipal authorities, is entitled to attend the sessions of the tax committee (of which more will be said later),<sup>33</sup> and to participate in them with an advisory vote. Such a representative of the municipality is bound to secrecy, and is liable for violation of this requirement, under the tax laws and the criminal laws, just as if he were a tax officer.

**Organization of the Finance Offices.** The organization and business arrangements of the finance offices are laid down in the order of business issued by the national Minister of Finance,<sup>34</sup> insofar as they are not covered by the national tax code.

The central figure in the finance offices is the director. He is the immediate superior of all the officers of the finance office; and all other persons in the finance office who stand in an administrative capacity are subordinate to him.

He is charged with the economical administration of his office and is responsible for the orderly execution of its functions. It is his duty to keep himself informed of the tax and economic relationships in his official district. As an aid to the accomplishment of this end he must keep continually in contact with the economic and professional associations of his district. In certain ways he must coöperate with the service offices of the customs and excise administration, the national authorities, and the state and local authorities of his district. He has to care for the management of his personnel, their improvement and their training. He acts as chairman of the sittings of the tax committees in the district of the finance office.<sup>35</sup>

<sup>31</sup> RAO. Section 23.

<sup>32</sup> Ordinance of February 14, 1924, Section 43. RGBI. 1924, I, p. 85.

<sup>33</sup> See RAO. Section 25; RGBI. 1920, p. 1118 ff.; and RGBI. 1923, p. 191 ff.

<sup>34</sup> FGO. cited above in note 27.

<sup>35</sup> FGO. cited above in note 27.

Fundamentally, the director has the right of making final decisions in all matters handled by the office. In acting upon affairs of general or fundamental significance he must consult the president of the state finance office.

Countersignature is a function belonging to the director. He is required to countersign all documents dealing with:

Affairs of general or fundamental importance.

Affairs for the decision of which, on account of their financial significance, their legal or economic difficulty, their incisive effect upon taxpayers, or the like, he is especially responsible.

Important treasury and accounting affairs.

Affairs which have been ordered before him, in general, or in individual cases.

Notices and other documents which are issued to the subordinate authorities are to be signed by the director or his deputy. In certain affairs, very narrowly limited, the expert assistants may sign documents. In simple routine matters, such as the issuing of a summons, the signature of a subordinate officer is sufficient.<sup>36</sup>

In carrying on his duties, the director can secure assistance from various sources. His deputy is appointed from the personnel of the finance office, by the national Minister of Finance. The position of deputy is regulated by the president of the state finance office.<sup>37</sup>

The director establishes a plan for the division of business in the office; and through this plan he may appoint an officer from among the expert assistants to act as the supervisory authority of the treasury of the finance office. If this is not done, the director himself acts in this capacity.<sup>38</sup>

Although the director is charged with all affairs touching general administration and personnel, he may appoint a suitable officer to whom is given, in addition to other duties, the work of general administration and personnel affairs, and the supervision of the business of the office along lines laid down by the director.<sup>39</sup>

<sup>36</sup> FGO. Section 10.

<sup>37</sup> Section 3.

<sup>38</sup> FGO. Section 2, No. 7. The treasury supervisor has general oversight of the execution of treasury business. The first officer of the finance office treasury is responsible for the orderly, efficient, and economical administration of the treasury and accounting services. FGO. Sections 8, 9.

<sup>39</sup> FGO. Section 5.

The business of the finance office is divided into departments of work. Sometimes several related departments may be united into one large special department. The number of such departments is to be governed by actual requirements; and the personnel is chosen with regard to the nature of the work.<sup>40</sup>

Although the finance offices constitute the foundation of the hierarchical fiscal administration, and so are fundamentally the lowest administrative authorities, in case of necessity officers may be placed under these, standing in still closer relationship to the local and individual communities. These assistant officers are subject to the authority of the director.<sup>41</sup> Their sphere of activity is regulated by resolution of the higher administrative authorities. Their decisions are decrees which<sup>42</sup> can be changed or set aside through superior decrees.

The work of the tax committees and business offices associated with the finance offices can best be discussed later in connection with the business office and committee system.

**The State Finance Offices.** The state finance offices, which form the second step in the ladder of tax administration, are directly under the national Minister of Finance.<sup>43</sup> The districts of these offices are so constituted, in agreement with the states, that as far as possible they may cover an entire state, or the great administrative districts of the states, or several states or administrative districts.<sup>44</sup> At present there are twenty-six of these offices.<sup>45</sup>

The primary function of the state finance offices is the supervision and direction of tax administration. They are responsible for the equitable application of the tax laws, and for the supervision of the local finance offices in their work.<sup>46</sup> This supervision consists largely in the decision of contests and complaints brought by tax-payers against some act of the finance offices.

Another function of the state finance office is participation in the administration of the monopoly in spirituous liquors.<sup>47</sup> It has also a

<sup>40</sup> FGO. Sections 4-10.

<sup>41</sup> RAO. Section 24.

<sup>42</sup> RAO. Section 70.

<sup>43</sup> RAO. Section 8.

<sup>44</sup> RAO. Section 11.

<sup>45</sup> Handbuch für das deutsche Reich, 1926, pp. 155-62.

<sup>46</sup> RAO. Section 13.

<sup>47</sup> Gesetz über das Branntweinmonopol, RGBI. 1918, p. 887.

share in the administration of the law concerning manufactured sweetstuffs, particularly as regards superior administrative control in respect to examinations.<sup>48</sup> Certain state taxes and other public taxes, such as the church taxes, which the nation has been asked to administer, may be assigned to the state finance offices.<sup>49</sup> The national Minister of Finance can annex to state finance offices a division for the administration of national property, and assign to it the administration of state property.<sup>50</sup>

As in the case of the local offices, the state finance offices administer customs and excises by means of a special division.

According to the preliminary order of business for the state finance offices,<sup>51</sup> there shall as a rule be three divisions in such offices, namely:

The division for property taxes and transfer taxes, which administers the income tax, the general property tax, the inheritance tax, the turnover tax, the unearned increment tax and the transfer tax;

The division for customs and excises, which also handles coal taxes;<sup>52</sup>

The division for national property administration, which administers both landed estates and buildings belonging to the nation, including army buildings, but excluding property used for the postal and railway services.

The chief officer of a state finance office is the president, who is appointed by the national Minister of Finance and is directly responsible to him. The president directs the business of the office and is the administrative chief of the directors of the divisions, the members of the office, and other authorities standing under him. The directors of the divisions represent the president in the conduct of their divisions. The members and the assisting officers administer the business assigned to them under the instructions and directions of the president. While the president is responsible for the execution of the business of the different authorities under

<sup>48</sup> Zucker-Nachsteuerungsordnung, RGBI. 1922, I, p. 451.

<sup>49</sup> Geschäftsordnung für die Landesfinanzämter, July 7, 1920, Section 1; Amtsblatt der Reichsfinanzverwaltung, p. 311.

<sup>50</sup> Geschäftsordnung etc., Section 1.

<sup>51</sup> Section 1.

<sup>52</sup> Sammlung der Entscheidungen und Gutachten des Reichsfinanzhofs, Vol. III, p. 160.



him, this does not free them from responsibility. The president watches over the guaranteeing of equality in the application of the tax laws, and supervises the execution of the business of the authorities subordinate to him. To him belongs the responsibility of seeing that all business is conducted legally, properly and economically. In case of his incapacity or absence, he is represented by the division director oldest in the service assigned to that place.<sup>53</sup>

The president of the state finance office supervises the work of all divisions. He is responsible to the national Minister of Finance for the proper functioning of the two divisions which handle property and transfer taxes, and customs and excises, respectively. The president must answer to the national Minister of the Treasury for the work of the division which administers the national property.<sup>54</sup>

**The National Ministry of Finance.** From the administrative side, the national Minister of Finance<sup>55</sup> is the head of the taxation system of Germany. All the threads of control over the tax administration are finally brought together in his hands. Since he is also the chief authority in connection with the budget, his position in respect to the entire financial system of the nation is one of enormous power and responsibility. As we have seen, he has under his immediate supervision the state and local finance offices with their branches or subdivisions.<sup>56</sup> The national Ministry of Finance manages the national treasury, supervises all national tax authorities, publishes the official journal in which general orders, laws, and other material of importance for tax administration appear, and performs various functions of like nature.

**Finance Courts.** A finance court is associated with every state finance office.<sup>57</sup> Although these courts are spoken of as divisions of such offices, as a matter of fact they are not subordinated to the

<sup>53</sup> Geschäftsordnung etc., Section 7, Amtsblatt der Reichsfinanzverwaltung, 1920, No. 22, p. 311.

<sup>54</sup> The organization of the national Ministry of Finance will be found in Chapter VI; and the various duties of the national Minister of Finance will be found in various chapters, particularly in the chapters on the budget and the Cabinet.

<sup>55</sup> RAO. Section 8.

<sup>56</sup> RAO. Section 14. In regard to the finance courts, see Dr. Popitz, Die Einrichtung der Finanzgerichte, in Deutsche Juristen Zeitung, 1922, p. 276 ff.

latter, but stand coördinate with them in many respects. The professional members of the courts are selected from the personnel of the state finance office, and in the way of service they are subordinate to the office president; but he has no control over their activities in administering justice.<sup>87</sup> As members of the finance courts, they are independent, and responsible only to the law.<sup>88</sup>

The membership of the court consists of two classes, professional and lay. The chairman of the court and the other professional members, as well as their substitutes, are appointed by the national Minister of Finance.<sup>89</sup> There is no definite educational requirement, since proper qualifications are guaranteed by the conditions of admission to service in the office. The chairman is required to give all his time to the duties of the finance court, but the other professional members may still participate in the non-judicial functions which the finance office performs. In fact, the national Minister of Finance has declared<sup>90</sup> that he considers it very essential that the professional members of the court shall continue to act at the same time as experts of the state finance office, so that as judges they may remain active officers in continual contact with actual practice. Since these judges do not belong to the ordinary courts, most of the constitutional provisions regarding the judicial position do not apply to them,<sup>91</sup> although, as we have seen, in their capacity as members of the finance courts they are independent of administrative control and subordinate only to the law. The provisions of the national law of officers concerning transference to other positions, retirement and service discipline, however, are valid for them.<sup>92</sup>

The tax code provides that the lay members of the court and their substitutes are elected for a six-year term, usually by the county assembly, or in Prussia by the provincial committee. The president of the state finance office, acting in view of local require-

<sup>87</sup> RAO. Section 15.

<sup>88</sup> See Geschäftsordnung für die Finanzgerichte, February 15, 1922, published in Amtsblatt der Reichsfinanzverwaltung, p. 135 ff.; also in Reichssteuerblatt, 1922, p. 93 ff.

<sup>89</sup> *Ibid.*, Section 7; also RAO. Section 15.

<sup>90</sup> Erlass vom 15 February, 1922.

<sup>91</sup> Constitution, Article 104.

<sup>92</sup> Verordnung über die Bildung der Finanzgerichte of August 5, 1921, RGBl. p. 1241; Popitz, Deutsche Juristen Zeitung, 1922, p. 276 ff.

ments, may extend the right to vote to other public law associations, such as boards of trade, labor organizations, associations of farmers, lawyers, physicians, druggists, and so on.<sup>63</sup> An ordinance of the national Minister of Finance provides that this shall be done as follows: One-half of the lay members of the finance courts and their representatives are to be elected by the organs of local self-government or representatives of the states, and one-half by the public-legal professional representatives listed in the ordinance.

Germans over twenty-five years of age, who have lived for at least a year in the judicial district and who have paid direct taxes, with certain exceptions, are capable of being elected to lay membership.<sup>64</sup>

Removal of lay members from office, by the state finance office, is permissible upon grounds that would warrant the removal of a national officer according to the national law of officers. The national Minister of Finance makes the final decision in the matter.<sup>65</sup> The member is automatically disqualified, without a court decision, if at any time he fails to satisfy all conditions of eligibility.<sup>66</sup>

The lay members, upon taking up their duties, have to promise that they will act without regard to persons according to their best judgment, that they will hold absolutely secret the affairs and relationships coming to their knowledge, and that they will not apply trade secrets to their own use.<sup>67</sup>

The finance courts are divided into chambers. A bench of two professional members and three lay members must sit when a decision is to be rendered by any chamber.<sup>68</sup> The chairmanship in all chambers belongs to the head of the finance court, whose official title is President of the Finance Court. As a rule he acts as chairman in one chamber and is merely represented in the others, through the professional member next in rank or some other substitute. He is not merely a moderator, but a judge in the court.

<sup>63</sup> RAO. Section 16; ordinance of National Minister of Finance, August 5, 1921, RGBI. p. 1241.

<sup>64</sup> RAO. Section 16.

<sup>65</sup> *Ibid.*, Section 18.

<sup>66</sup> RAO. Section 17.

<sup>67</sup> Geschäftsordnung für die Finanzgerichte, February 15, 1922, Amtsblatt der Reichsfinanzverwaltung, p. 135 ff. and Reichssteuerblatt, p. 93.

The president of the court bears the general responsibility for the conduct of business. He has, in addition to his judicial and supervisory functions, the following duties to perform:

The division of the professional members and their representatives into chambers, and the regulation of substitutes insofar as this is not provided for through appointment;

The division of the court business among the individual chambers, after hearing a representative of each chamber;

Establishing the days for the sittings of the chambers;

He has further functions in respect to the lay members, in that he calls them together and administers the oath to them. He makes decisions in respect to their eligibility, resignations, and so forth, hears proposals concerning their dismissal from office, divides them among the individual chambers, gives notice to the president of the state finance office of actions which would justify proposals for their removal from office, and establishes their compensation for expenses and loss of time;

He issues ordinances concerning the establishment and the business management of the business offices connected with the finance court.<sup>68</sup>

The president of the finance court thus acts as business manager of the court, as well as supervisor and judge.

The functions of the finance courts will be discussed under the methods of procedure and the remedies in tax contests.

**The National Finance Court.** The national Finance Court (Reichsfinanzhof), located at Munich, is the highest tax authority in Germany.<sup>69</sup> Its chief function is to secure unity in the application of the tax laws of the Reich. Its independent position<sup>70</sup> in the sphere of tax administration makes it a protecting authority for taxpayers against the very powerful and highly organized tax gathering machine. So strong is its position made by law that it can stand in opposition to all the tax administering authorities, including the national Minister of Finance. But it also serves the

<sup>68</sup> Geschäftsordnung für die Finanzgerichte, Section 5; RAO. Sections 16-18.

<sup>69</sup> RAO. Section 32.

<sup>70</sup> "The National Finance Court does not belong to the financial authorities administering the national taxes. It is rather the highest tax court. Its decree activity is a purely judicial activity; also it is established with all guarantees of judicial independence."—Sammlung der Entscheidungen und Gutachten, IV, 1920, p. 12.

purpose of guaranteeing that the laws will be carried out properly and that the tax relationships established between the states, the communes, and the Reich by the Constitution and the laws will be preserved.

*Organization.* The court consists of a president and the necessary senate presidents and councillors. The members of the court are appointed by the President of the Reich for life. The other officers connected with the court are appointed by the national Minister of Finance. No one is eligible to membership in the court who has not completed his thirty-fifth year; and at least one-half of the members must have the qualifications for the judicial office. The members of the National Finance Court as such are independent and are subordinate only to the laws. Article 104 of the national Constitution, which governs the position of courts in general, is applicable to them.<sup>71</sup> For punishment of members of the Finance Court in case of misconduct in office, and for their retirement, the provisions referring to members of the National Supreme Judicial Court are applicable.<sup>72</sup>

The members of the court are entitled to pensions in case of retirement. Moreover, they enjoy a high salary rating.<sup>73</sup>

Although special qualifications are not required, except for one-half of the membership of the court, who must have the qualifications for the judicial office, as a matter of practice nearly all persons who have been appointed have had the qualifications for the judicial office.

The position of the court is so strong is every way that the members are not only free to exercise their judgment as against the tax administration, but temptation to yield to illegal influences has been largely removed. It is said that so far only men of faultless honor and recognized ability have been called to the membership of this court.

*Functions.* The National Finance Court is the highest appellate authority in tax affairs in Germany. As such it speaks the final word in individual tax cases. It is also a deciding authority in such

<sup>71</sup> Judges are appointed for life, and cannot be temporarily or permanently removed from office or transferred to another position or retired except by judicial decision, for reason, and according to legally prescribed forms. Constitution, Article 104.

<sup>72</sup> RAO. Sections 33-36.

<sup>73</sup> Besoldungsgesetz, Reichsgesetzblatt, 1927, I, p. 349.

matters as are particularly given over to it by law.<sup>74</sup> These are affairs of more general nature, which deal with general tax administration rather than the application of the tax law to individual cases, and which often do not have for their immediate object the decision of a tax controversy.

Although ordinarily the National Finance Court has to do only with the national taxes, upon the proposal of a state administration the national Minister of Finance can establish it as the highest deciding authority in state tax matters.<sup>75</sup> In case of difference of opinion between the national Minister of Finance and a state administration concerning the question, whether a state tax provision is compatible with the law of the Reich or is against its clear intent, either the state administration or the national Minister of Finance may call upon the National Finance Court to decide.<sup>76</sup>

According to the law of December 31, 1919, concerning the socialization of the electrical business, appeals coming from the special court of arbitration which handles cases concerning compensation and interest in connection with this business are to be decided by the National Finance Court.<sup>77</sup>

The administration of the National Finance Court is a function of the president of the court, who acts alone in this field. He directs the general business management of the entire court. He determines upon the regular days for sittings, and in case of doubt, he decides before which senate an affair is to go. He decides in all personnel and administrative affairs, especially in affairs which concern the budget, the treasury system, the business quarters and their establishment, and the supply of books and other equipment.<sup>78</sup>

The president gives the oath to the members and officers newly entering into service. He appoints and dismisses the staff in the business offices, the chancellory and the subordinate services. Upon the basis of an authorization of the national Minister of

<sup>74</sup> RAO. Section 32.

<sup>75</sup> *Ibid.* This has happened in only one case. Through the order of the national Minister of Finance of April 27, 1920, the National Finance Court is established as a final appellate authority for the Hamburg tax on increased valuation. *Amtsblatt der Reichsfinanzverwaltung*, 1920, p. 183.

<sup>76</sup> Gesetz über den Finanzausgleich zwischen Reich, Ländern und Gemeinden (Finanzausgleichgesetz) of April 27, 1926, Article 6, RGBl. I, p. 203.

<sup>77</sup> Reichsgesetzblatt, 1920, pp. 22-23. See Articles 6, 8, 11.

<sup>78</sup> Geschäftsordnung des Reichsfinanzhofs, May 29, 1920, Article 1, in *Zentralblatt* No. 29, p. 861.

Finance, he appoints the bureau chancellor and subordinate officers.<sup>79</sup> The president, the senate presidents, and the three senior members of the court, acting together, assign the business to the various senates and determine the membership of each. These decisions are made by majority vote, but in case of a tie the president decides.<sup>79</sup> This method of dividing business is meant to eliminate any possibility that a person bringing a case might be able to choose a senate which he had reason to hope would favor him. All precautions are taken, in short, to prevent prejudiced or partial action on the part of the court.

In carrying out its judicial functions, the court operates as a collegiate body. It is divided into chambers known as senates, and it may act either in full assembly, through the great senate, through individual senates, or through individual senates united.

The full assembly includes all members of the court. It acts when a question arises concerning the removal of a member from office, permanently or temporarily, or the retirement of a member against his will. It decides also, with the sanction of the Minister of Finance, upon the drawing up or the changing of the order of business of the court.<sup>80</sup>

The great senate consists of the president of the court, the senate presidents or their substitutes, and four members or their substitutes, who are to be determined upon by the president in advance for the business year.<sup>81</sup> The great senate acts in two cases:

When an individual senate takes a legal position which deviates from an official published decision. In such cases it has to bring the affair before the great senate;<sup>82</sup>

When there is a difference of opinion between the national Minister of Finance and a state administration as to whether a state tax law is compatible with the national law or contrary to its evident intent.<sup>83</sup> The National Finance Court here acts as a court of jurisdiction in much the same capacity as the High Court of State. Before the decision the national and state authorities concerned must be heard. Their declarations are presented in writing. The

<sup>79</sup> RAO. Section 39.

<sup>80</sup> RAO. Section 54 and Geschäftsordnung, Article 5.

<sup>81</sup> RAO. Sections 39, 46.

<sup>82</sup> RAO. Section 46.

<sup>83</sup> Finanzausgleichgesetz, Reichsgesetzblatt, 1926, Pt. I, p. 203.

court may order an oral hearing, and upon the proposal of a central authority concerned, must provide for one. The decision is rendered in a final decree which states the grounds on which it is based. It is presented to the central authorities concerned. This decision has the force of law;<sup>84</sup> and if it holds that the contested tax provision is at variance with the national law, such provision is no longer valid. The national Cabinet publishes the decision, without the grounds therefor, in the *Reichsgesetzblatt*.<sup>85</sup>

The individual senates, whose number is determined upon by the national Minister of Finance, at present five in number,<sup>86</sup> consist of three or five members according to the nature of the business to be carried on. The president of the court holds the chairmanship in the senate to which he belongs. In the other senates the chairmanship is held by the senate presidents.<sup>87</sup> The ordinary cases which come before the court are handled by the individual senates. For the settlement of certain affairs, which cannot be discussed here, the individual senates unite.

The judicial business of the court is conducted according to the laws and the business ordinance. For each independent affair the president of the senate appoints a person to make a report, and at his discretion a coöperating reporter as well. For an affair assigned to the great senate there must be appointed, in addition to the regular reporter, another reporter from another senate. The reporter as a rule has to work up the case in preparation for the decision, so that the essential facts and the legal questions involved can be easily understood. The associate reporter also expresses his opinion in the report. The chairman decides whether the reports have to be circulated for consultation by the different members of the senate. After the discussion and the vote, the decision is formulated by the reporter or one of the members commissioned by the chairman. In necessary cases the senate gives the grounds for its decision.<sup>88</sup>

The National Finance Court publishes its decisions in so far as they have fundamental significance.<sup>89</sup> As a rule the published deci-

<sup>84</sup> Law of April 8, 1920, *Reichsgesetzblatt*, pp. 510-11.

<sup>85</sup> For examples, see *Reichsgesetzblatt*, 1921, p. 1332; 1922, pt. 1, pp. 215, 751.

<sup>86</sup> *Handbuch für das Deutsche Reich*, 1926, p. 155.

<sup>87</sup> RAO. Section 38.

<sup>88</sup> For this procedure, see RAO. Sections 251-61.

<sup>89</sup> RAO. Section 44.



sions are digests in the form of a short legal brief. The advisory opinions of great significance are also published, although this is not prescribed by law.<sup>90</sup>

**The Treasury and Accounting Services.** The treasury service is naturally coördinated with the financial authorities, but is in general so regulated, that the treasuries have a certain independence. They constitute divisions of the financial authorities and work immediately under the director. The treasury and accounting system in the national treasury administration is articulated with the finance office treasury administration.

With each finance office is connected a treasury, which has for its function the administration of the treasury and accounting services of its own district. It is competent for the collection and management of the taxes and receipts, as well as for all money obligations, which grow out of the tax laws; and for the direction of payments and other indemnifications.<sup>91</sup> It operates further within the national debt administration. It holds the seal of the finance office and is authorized to conduct independent correspondence in treasury affairs. The director of the finance office is the supervisory authority of the treasury, or if he wishes he may appoint another officer for this function. To the supervisor belongs the issuing of general ordinances concerning the conduct of business, as well as the working up of especially weighty administrative cases.<sup>92</sup>

The first treasury officer is responsible for the orderly, energetic, and economical execution of the business of the treasury and accounting services. To him belongs the reporting procedure, in so far as it is prescribed. The other treasury officers, as well as all persons working in the treasury, collecting and accounting services, and other employees, have to follow his directions.<sup>93</sup> The direction of executory officers is also a function of the treasury service.

In carrying out its tasks, the treasury is supported by assisting offices of various sorts, which are designated as assistant treasuries.

<sup>90</sup> The opinions are published by Karl Gerber, Munich, under the title "Sammlung der Entscheidungen und Gutachten des Reichsfinanzhofs."

<sup>91</sup> FGO. Article 2.

<sup>92</sup> FGO. Articles 5, 6, 7.

<sup>93</sup> FGO. Article 7, pars. 2-5.

These are of special importance, in locations where in earlier times they were themselves the tax authorities, as in communes, independent tax districts and the like. The assistant treasuries are joined to the financial office treasury, and must comply with its instructions, and collect and deliver up the taxes upon the basis of the tax rolls established by the financial treasury.<sup>94</sup>

In each state finance office there is a superior treasury under a responsible chairman. It constitutes a special service which stands immediately under the president of the state finance office, though the supervision is actually managed by the first accounting director in the business office. It exercises the entire treasury administration of the division for property and business taxes, as well as the division for tolls and customs. It stands over the finance office treasuries in both treasury and accounting business, and apportions to them sums that they are to collect. The finance office treasuries deliver balances to it or receive them from it as occasion arises. It keeps accounts of the income received in the district of the state financial office, and the expenditures especially assigned to the state financial office in the budget plan. It is also the collecting treasury for the national income tax, and for the state taxes when they are assigned to the Reich for administration.<sup>95</sup>

The central depository of the Reich is the national head treasury. It receives the moneys delivered by the superior financial treasuries, and pays the moneys which are assigned to the state financial office.<sup>96</sup> In the national Ministry of Finance is a central accounting office which has charge of the accounting work in connection with taxation.

The treasury and accounting service in the finance courts is rather insignificant, as they do not receive tax income. This work is looked after by the superior finance office. The treasury and accounting administration of the National Finance Court is assigned to its own treasury, which has to settle accounts with the national head treasury.<sup>97</sup>

*Business Offices.* In the organization of the national financial authorities, a sharp distinction is made between work of a decisive

<sup>94</sup> Instructions of the national Minister of Finance of March 1, 1920, in *Amtsblatt der Reichsfinanzverwaltung*, p. 75.

<sup>95</sup> *Geschäftsordnung für die Landesfinanzämter* vom 7 July, 1920, Article 6.

<sup>96</sup> *Erlass des Reichsminister der Finanzen*, February 15, 1922.

<sup>97</sup> *Geschäftsordnung des Reichsfinanzhof*, Article 8.

and judicial nature and that which merely involves the carrying on of routine business. The former type of work is done by the higher officers with large training, education and experience, while the latter is assigned to the middle and subordinate officers. Special provision is made for the management of routine matters in the state finance offices, by the establishment in each of a business office. This office, which is under the superior direction of the president of the state finance office, has as its immediate head a member of the latter office. Its function is the handling of such business as does not fall within the scope of any special division; this does not include matters which some division has laid before the president for decision.

The first accounting director in the business office supervises the superior treasury, and oversees business connected with budgetary matters, treasury and accounting affairs, and property; in all this he is guided by the laws and ordinances.<sup>98</sup>

Business offices are also established in the finance courts.<sup>99</sup>

From time to time various matters are assigned to the business offices by law or ordinance. As examples the following may be cited:

The initiation of procedure is brought before them.<sup>1</sup>

The business offices of the courts have to communicate to those interested, transcripts of documents or declarations which are not to be delivered over to them or given up to them.<sup>2</sup>

This is valid also for the business offices of the National Finance Court, in proceedings involving formal complaints against the law.<sup>3</sup>

The business offices handle the making good of disbursements which arise out of an interest in the legal proceedings, as well as those payments for which the Reich is obligated in any way.<sup>4</sup>

All the various tax authorities make such disbursements through their finance offices.

<sup>98</sup> Vorläufige Geschäftsordnung für die Landesfinanzämter of July 7, 1920, Article 9, Amtsblatt der Reichsfinanzverwaltung, No. 22, p. 311.

<sup>99</sup> Vorläufige Geschäftsordnung für die Finanzgerichte, February 15, 1922, Article 10; Amtsblatt der Reichsfinanzverwaltung, p. 135.

<sup>1</sup> This refers only to the reception of documents; not to judging or deciding cases.

<sup>2</sup> RAO. Section 249.

<sup>3</sup> RAO. Section 275.

<sup>4</sup> RAO. Section 288, par. 3.

Expenses for which reimbursement is authorized are established in the business offices of the authorities in which they are incurred. Contests against the amount are decided finally by the authority concerned.<sup>5</sup> The same is true for all fees charged.

The compensation of intelligence agents and experts is established in the business offices of the authorities, in which they have been active.<sup>6</sup>

**Valuation and Assessment of Property.** The economic strains and stresses of recent years have made heavy taxation necessary in Germany. In order that this burden shall be distributed as equitably as possible, and that no business or agricultural enterprise shall be crippled by being made to assume an undue proportion of the load, far-reaching laws have been passed. After many adjustments and changes, a series of laws were passed in 1925 governing income taxes, corporation taxes, business and property taxes, and various others.<sup>7</sup>

From the standpoint of administrative organization, the most important of these laws is that which deals with methods of valuation for business and property taxes. It classifies property for the purpose of valuation, specifies the factors that must be taken into consideration in valuing property, and lays down methods by which a unified value may be obtained. It also establishes national authorities for the carrying through of the law in a scientific way. The unified values established by these national authorities are used not only for the purpose of national taxation, but must also be used by the states and localities when they are assessing property according to the principle of value.<sup>8</sup>

For the purpose of valuation, property is divided into four main classifications:

1. Agricultural, forestry, and horticultural property.
2. Business property.
3. Real estate.
4. Other property.<sup>9</sup>

<sup>5</sup> RAO. Section 293.

<sup>6</sup> RAO. Section 297.

<sup>7</sup> RGBl. 1925, I, pp. 189-260.

<sup>8</sup> Reichsbewertungsgesetz, RGBl. 1925, I, p. 215, Section I. This law will be cited henceforth as RBG. It should be noted that the principles herein established are not as yet universally applied. For postponement of application by ordinance issued by the national Minister of Finance, see RGBl. 1928, I, pp. 61, 150.

<sup>9</sup> RBG. Section 2.

The law analyzes the property to be included in each of these classes, and the methods to be employed for arriving at a unified value. It also determines what national authorities shall participate in the valuation of the different kinds of property.

As an example of the carefully worked out detail of the law, Section 16, dealing with the valuation of agricultural property, may be quoted in part:

In order to establish equality in the valuation of agricultural enterprises within the national domain:

1. There shall be ascertained for the district of each state finance office the territories in which are found the most productive enterprises; and in relation to these enterprises and others of the same type . . . the ratio shall be determined, in which the productive values (reckoned on the basis of area) of similar enterprises in the various districts within the jurisdiction of the state finance office stand to one another. For thus ascertaining and estimating, instead of the district of one finance office there may be used determined economic units which consist of several state finance office districts. Rented property may be considered among the comparable enterprises. In connection with fixing the ratios of productive values . . . such ratios are to be established (with due consideration for the situation of the farm, the compactness or division of the enterprise, the value of the buildings and equipment as well as of secondary enterprises and special kinds of farming) as are to be considered normative for farms in the territory concerned. The relationship in which the productive values . . . stand to one another, is to be expressed in percentages; in this respect the most productive of the similar enterprises is to be placed at 100 per cent.

3. By means of a legal ordinance with legally binding force issued by the national Minister of Finance with the consent of the Reichsrat, classes of productive value, as well as the highest and lowest values . . . of the enterprises falling within the classes . . . are to be established; this establishment can be made for one main fixed period or for several. The highest boundary value of the highest class of productive value applies to those similar enterprises which, according to the computations made on the basis of No. 1, have the greatest productive value of any in the region.<sup>10</sup>

*The Valuation Authorities.* The national valuation authorities are:

The National Minister of Finance with his advisory valuation council.

<sup>10</sup> The ordinance contemplated in this paragraph was issued on May 14, 1926: Verordnung über die Bildung von Ertragswertklassen und Rahmensätzen, usw., RGBl. I, p. 238.

The superior valuation committees located at the seat of each state finance office.

The land valuation and the business valuation committees located in each finance office district or division of such district.

The advisory valuation council established in connection with the National Ministry of Finance consists of :

The National Minister of Finance or a national officer entrusted by him with the handling of general or individual cases.

Always an official representative from each of two states, appointed by the Reichsrat.

Two members appointed by the national Minister of Finance in consultation with the competent national ministers, and two actual farmers named by the Reichsrat who possess general agricultural expertness (when forests are being valued, forest owners).

Always a member appointed by the national Ministry of Finance in consultation with the competent minister, and one member named by the Reichsrat, who without being actually in the agricultural business have a general expertness in agriculture (when forests are being considered, forestry experts).<sup>11</sup>

Although the council has its seat at Berlin, it undertakes valuation anywhere in the national territory. Representatives of the national Cabinet are empowered to participate in its meetings, as are commissioners from state cabinets in whose territory the value is to be established. It may also, according to its judgment, admit agricultural experts or members of professional associations.<sup>12</sup>

The national Minister of Finance directs the business of the council, which has the following functions:<sup>13</sup>

To make the findings and estimates provided for in No. 16 of the valuation law (quoted above), and to fix the economic districts and similar districts;

To express its opinion on proposed legal ordinances concerning classes of productive value and limits of values, before such ordinances are laid before the Reichsrat;

Under certain conditions, and after a hearing, to arrange specific properties in valuation classes. This is done only upon the request of the national Minister of Finance;

<sup>11</sup> RBG. Section 17 and the decree of the national Minister of Finance of March 11, 1926, RGBl. I, p. 151.

<sup>12</sup> RBG. Section 18.

<sup>13</sup> RBG. Section 19.

- Upon the request of the Minister of Finance, to fix the classes of productive value of the boundary values, which are most important for specific districts.
- To establish for specific districts (also upon request from the Minister of Finance) what proportion of the value of agricultural enterprises with normal buildings and equipment should be attributed as a general rule to the land, to the buildings, and to the equipment;
- To advise and assist the national Minister of Finance in the measures which he takes to further equalization of valuation in Germany.

*Superior Valuation Committees.* For the district of each state finance office, a superior valuation committee is established, which is a national authority under the supervision of the state finance office in whose district it is located.

The chairman of the finance court connected with the state finance office is also the chairman of the superior valuation committee. His deputy is appointed by the national Minister of Finance; other members and their deputies are chosen by the state cabinet in whose territory the business or real estate is located.<sup>14</sup> Affairs are handled by chambers of five members, of whom three are laymen or honorary members.<sup>15</sup> The chairman of the committee is responsible for the conduct of its business. In this connection he employs the officers and equipment of the finance court.

*Local Valuation Committees.* In order to secure a unified valuation for agricultural, forestry, and horticultural enterprises and other real estate, land valuation committees are established at the location of each finance office; or in divisions within the district of each finance office.<sup>16</sup>

The director of the finance office acts as the chairman of the land valuation committee, issues the necessary orders,<sup>16</sup> and in so acting makes use of the officers and the organization of the finance office. The committees and the district committees are governed by the same provisions as the superior valuation committees.<sup>17</sup>

<sup>14</sup> RBG. Section 58.

<sup>15</sup> RBG. Section 57.

<sup>16</sup> RBG. Section 50, and Verordnung über die Bildung der Grundwertauschüsse und der Gewerbeausschüsse bei den Finanzämtern und ihr Verfahren, March 11, 1926. RGBl. p. 151. For definition of real estate as distinct from lands classified for special purposes, see RBG. Section 34.

<sup>17</sup> RBG. Section 50 and Section 1 of the ordinance above cited.

The members of these committees include:

1. An officer of the finance office, who is either the director or his substitute, and who holds the chairmanship.
2. One of the members of the cabinet of the state where the property is located, who should either be one whose function is valuation, or an expert in valuation. If an authority exists in the state whose function is real estate valuation, he should, if possible, be appointed.
3. An officer appointed by the executive organ of the community in whose territory the business or real estate is located.
4. Members elected by the organs of self-administration on the one hand and by the public-legal professional associations on the other hand, in equal number.
5. Members chosen by the president of the state finance office in whose district the business or the real estate is located, and the state cabinet, to the number of one-half of the appointed members; the entire number of these members must not be greater than one-half of the members elected by organs of self-administration and professional associations.<sup>18</sup>

The members of these committees are independent, being responsible only to the laws and executive orders.

After a value is established by the committee, the finance office issues a written decree which goes to both the owner of the property, and the land and building tax authority concerned. The decision contains a statement of what legal remedies are available to the taxpayer and within what period of time and before what authority action must be brought.<sup>19</sup>

Against the value thus established a formal protest is permitted, which is decided by the land valuation committee. An appeal from the decision lies to the superior valuation committee. Against the appellate decree a legal, formal complaint is allowed, which is decided by the National Finance Court.<sup>20</sup>

In any procedure other than that involving the establishment of value, the provisions of the national tax code are applicable.<sup>21</sup> Formal complaints in other than valuation cases are decided by the state finance office.<sup>20</sup>

<sup>18</sup> RBG. Section 51. See also ordinance above cited.

<sup>19</sup> RBG. Section 54.

<sup>20</sup> RBG. Section 56.

<sup>21</sup> See RAO. Sections 281-83; also description of the different kinds of tax procedure as found later in this chapter.



Unified values for gainful business are established by the business valuation committees, which are usually identical with the land valuation committees. The procedure is essentially the same,<sup>22</sup> although there are several slight variations.<sup>23</sup>

The valuation of objects which have not been included in the above categories, for the purpose of obtaining a unified value for the entire property, is established by the finance office.<sup>24</sup>

**Tax Committees.** Connected with the finance offices are committees which have special functions to perform in regard to income and property taxes<sup>25</sup> (not including the inheritance tax), and occasionally other taxes as well.<sup>26</sup> These committees coöperate in the assessment of taxes. Under certain conditions they participate in the adjustment of preliminary assessments,<sup>27</sup> in decisions as to tax refunds, and in decisions as to whether or not the finance office will defend itself against a formal complaint.<sup>28</sup>

The members of the tax committee also assist in the preparation of the documents necessary for deliberation and decision as to questions of taxation. They investigate the business relationships and practices of taxpayers, and inquire into other relevant matters.<sup>29</sup>

In making their decisions, they are bound not only by the law, but by all the ordinances and executive orders or other administrative directions which may be issued for the purpose of carrying out the law. They receive no salary for their services, but are allowed compensation for actual expenses and loss of time.<sup>30</sup>

<sup>22</sup> RBG. Section 69.

<sup>23</sup> See RBG. Sections 68-71.

<sup>24</sup> RBG. Section 72.

<sup>25</sup> The law is not clear as to how far the work of the land valuation committees in respect to property taxes coördinates with the work of the tax committees.

<sup>26</sup> RAO. Section 25, and Verordnung über die Bildung der Ausschüsse, u. s. w. May 25, 1920, RGBl. p. 118 ff. and Verordnung zur Aenderung der Steueraussschussordnung, March 10, 1923, RGBl. I, p. 191 ff.

<sup>27</sup> A preliminary assessment is made when particular reasons make it difficult to ascertain the value of the property, when an uncertainty exists as to whether or how far certain conditions precedent have been fulfilled, when complications are present because of life interest in property, and so on.

<sup>28</sup> RAO. Section 25; also Dritte Steuerordnung, February 14, 1924, No. 45, RGBl. I, p. 85.

<sup>29</sup> See Articles 145-51, 214, of the National Tax Code.

<sup>30</sup> RAO. Section 26.

In the selection of members for these committees, the law requires that various types of property and income shall be represented. The elected members are chosen by the administrative organs of the local units, for a three-year term.

All Germans are eligible for this office who are more than twenty-five years of age, who have lived in the assessing district one year (or in the community if it is divided into more than one tax district), and who have paid direct taxes.<sup>31</sup> Members are bound by oath to perform their duties conscientiously, to observe secrecy, and the like.<sup>32</sup> Appointed members may be provided for. The national Minister of Finance has issued several ordinances developing in more detail provisions of the law.

These ordinances provide for a chairman who is the director of the finance office, or a finance officer acting as his representative; from four to eight elected members; and one-half as many appointed members. The same members may serve on more than one committee.<sup>33</sup>

The district served by each tax committee may coincide with the district of a finance office, but is more likely to be a subdivision. As a general rule a tax district includes not fewer than 1500 or more than 20,000 inhabitants.<sup>34</sup>

The state finance office determines the tax districts for each local finance office, the number of members of the tax committee, the representative or substitute of the director of the finance office who is to serve as chairman of the committee, the establishment of special committees and the scope of their operations; and the rate of compensation for time spent. It also selects the appointed members and their substitutes.<sup>35</sup>

In the sittings of the committee, to which every member must be invited, and which is competent to do business if the chairman or his substitute and at least two members are present, the director of the finance office or his representative directs the business.<sup>36</sup> The

<sup>31</sup> RAO. Section 27; RGBl. 1922, I, p. 465.

<sup>32</sup> RAO. Section 29.

<sup>33</sup> Verordnung über die Bildung der Ausschüsse, u. s. w., May 25, 1920, RGBl. 1118.

<sup>34</sup> *Ibid.*, Sections 1-3, as amended by an ordinance of March 10, 1923, RGBl. I, 192.

<sup>35</sup> *Ibid.*, Section 13.

<sup>36</sup> RAO. Section 30.

national Minister of Finance and the state finance office may at any time look into the course of the committee transactions and send to the sittings officers with advisory votes.<sup>37</sup>

*Special Tax Committees.* Beside the committees established for the tax districts, special committees can be established for several tax districts or for the assessment district.<sup>38</sup>

To these special committees can be assigned:

- Subsequent and new assessments
- The adjusting of preliminary assessments
- Difficult assessments
- Decisions regarding refund claims
- Decisions concerning protests

These committees may be required to undertake the assessment of corporation taxes and to decide protests made by those obliged to pay such taxes. To the special committees can also be assigned the undertaking of an individual assessment after the conclusion of the general assessment, the assessment of especially weighty or difficult cases, the assessment of the corporation tax to taxpayers whose obligations are not clear without special investigation, and the decision concerning protests in the preceding cases. The director of the finance office determines what kind of cases or what individual cases are of such difficulty or importance as to be acted upon by these special committees.<sup>39</sup>

**Tax Procedure.** The tax code (RAO) and the valuation law (RBG) not only establish the authorities and agencies which have been discussed above, but also provide in considerable detail for the manner and methods of carrying out their functions. The duties and rights of taxpayers are likewise set forth in these laws.

Taxpayers must furnish the taxing authorities with such facts as will aid them in making a fair assessment. Books must be kept by those engaged in business, according to standards established by law. All taxpayers must make declarations in prescribed form.<sup>40</sup>

The finance office has to examine the cases in which there is a liability for taxes, and to ascertain the factual and legal rela-

<sup>37</sup> RAO. Section 31.

<sup>38</sup> Verordnung über die Bildung der Ausschüsse, u. s. w. No. 4.

<sup>39</sup> Ordinance of March 10, 1923, No. 1, No. 2, RGBl. I, p. 192.

<sup>40</sup> RAO. Sections 137-68 and *passim*; RBG, *passim*.

tionships which are essential for establishing the tax liability. It must examine the declarations of the taxpayers<sup>41</sup> as well as the assessment lists.<sup>42</sup> If the finance office has doubts regarding the accuracy of any declaration, it may make an inquiry, subpoena the taxpayer, or in necessary cases bring the taxpayer before it to provide further information.<sup>43</sup>

The cost of the inquiry is borne by the taxpayer when the final assessment exceeds the amount of his declaration by more than one-third, unless it should happen that the deviation results through difficulty in figuring the depreciation or other excusable errors.<sup>43</sup>

The finance office may call in experts or employ examining officers. It can secure the help of representatives and employees of associations, and representatives of the business or branch of business to which the taxpayer belongs. The persons so called upon and the experts must keep the information disclosed absolutely secret and must not convert it to their profit. In so far as peril does not lie in postponement, the finance office has to give notice to the person who will be commissioned to serve in this capacity, to the associations to which he belongs, and to the taxpayer. If the taxpayer apprehends from the service of a particular person in this capacity, injury to his business or business secrets or injury to his business activity, he may object. If his objection is not allowed he may have the examination made by special experts at his own cost.<sup>44</sup>

As a rule the finance office does not examine the books and papers of a taxpayer, unless the information given by the taxpayer is insufficient or doubts exist as to its validity. Such books and papers are, upon the wish of the taxpayer, to be examined at his dwelling or place of business.<sup>45</sup>

After the conclusion of its investigation, the finance office fixes the tax. In so far as it is not able to establish or compute the bases of taxation after its investigation, it estimates them, taking into consideration all circumstances which might bear upon the estimate.<sup>46</sup>

<sup>41</sup> RAO. Section 204.

<sup>42</sup> RAO. Section 105.

<sup>43</sup> RAO. Section 205.

<sup>44</sup> RAO. Section 206.

<sup>45</sup> RAO. Section 207.

<sup>46</sup> RAO. Section 210.

Tax notices, which are to be given in writing and sent sealed, must contain not only the amount of the tax, but also: <sup>47</sup>

Information as to what legal remedy is permitted, and within what period of time and before what authorities it is to be instituted; The basis of the assessment and establishment of the tax, in so far as this has not already been communicated to the taxpayer; Notice as to where, when, and how the tax or charge is to be paid;  
The points of difference from the tax declaration.

According to the tax law, remedies are available to the taxpayer with which he can contest both questions of fact and questions of law in respect to the assessment.

The legal remedies are: <sup>48</sup>

In regard to all taxes except customs and excises: the appeal procedure.

In regard to customs and excises: the contest procedure.

The appeal procedure includes the following steps: <sup>49</sup>

An objection (Einspruch) may be made against some decision of the finance office or one of its branches. The finance office itself decides upon the objection.

An appeal (Berufung) may be made against this decision. The appeal is taken before the finance court and is decided by it.

In case the taxpayer is not satisfied with the decision, he may enter a legal complaint (Rechtsbeschwerde) which is decided by the National Finance Court.

The contest procedure is as follows: <sup>50</sup>

A contest (Anfechtung) is entered against a decision of the finance office or one of its branches. This is decided by the state finance office.

A legal complaint (Rechtsbeschwerde) may be made about the decision on the contest; the legal complaint is decided by the National Finance Court.

Authorities and officers whose duty it is to collect taxes and to institute processes of execution are called executory authorities. The usual executory authority is the finance office. In the

<sup>47</sup> RAO. Section 211.

<sup>48</sup> RAO. Section 217.

<sup>49</sup> RAO. Section 218.

<sup>50</sup> RAO. Section 219.

process of execution the rights of the taxpayer to due notice, a hearing, and legal remedies, are carefully guarded. If the taxpayer denies or contests his liability, the finance office decides in the matter. A protest before a court (*Gerichtliche Klage*) may be entered against such decision only under exceptional circumstances, by persons other than the original taxpayer who may be obligated; it will be handled according to civil process. When execution is ordered it may be performed by special executory officers under the direction of the tax authorities, or by the ordinary court executory officers. Costs of execution are borne by the delinquent.<sup>51</sup>

**Summary and Conclusions.** The most remarkable feature which has appeared in this survey of tax administration in Germany, is its high degree of centralization. This is expressed in the very extensive power over sources of taxation possessed by the Reichstag, the extremely large proportion of all German taxes which goes to the Reich, and the direct administration by the Reich of its own taxes, as well as of various taxes which appertain to other units of government.

For carrying on its tax activities, the Reich has established a gigantic tax machine, consisting of a hierarchy of officers, committees, treasury and accounting authorities, and tax courts. Every part of this machine is held under continuous and effective control. Such control may be political, as in the case of the Minister of Finance; it may be administrative, in that it is exercised by superior administrative authorities; or it may be judicial, in so far as it is exercised by the tax courts. Behind all these types of control is still another. The vast tax machine operates under a powerful legislative control, in that it must proceed according to definitely established forms and principles laid down by the tax laws and legal ordinances. These include principles for the valuation and assessment of property, classifications which must be conformed with in assessing property, and methods for obtaining a unified valuation of the property to be assessed.

The states and local units, however, are not excluded from the process of national tax administration, as they participate in establishing tax committees of various sorts, tax districts and finance offices. Through the committee system, a large number of non-

<sup>51</sup> RAO. Sections 298-315.

professional individuals are drawn into the tax machine, thus assuring that local considerations will have some place in the tax administration. States and local units have also the right to be heard by the national tax authorities in certain cases which concern them intimately.

Another striking feature of the German system of tax administration is the fact that in practically every instance, the control of business procedure and the actual work of assessing and collecting taxes are in the hands of experts with special professional training, while the advisory activity is carried on quite largely by laymen. Thus the expertness, forcefulness, and impartiality of the professional administrator are combined with the detailed business knowledge, non-bureaucratic feeling and practical hard-headedness of the layman.

An interesting and important feature of tax administration is the separation of the legal and administrative functions, not by giving legal affairs into the hands of the ordinary courts, but by placing them exclusively in the hands of special administrative courts, the tax courts. The process of selecting the members of these courts, their qualifications, their independence, and their high position, are almost guarantees that they will be above reproach. They stand between the taxpayer and the administration in protecting the rights of both the individual and the government. The National Tax Court stands in the position of a supreme court of judicature in respect to differences of opinion between the national administration and the states.

Although the practical exigencies of the post-war situation are responsible for the highly centralized tax system and for the direct administration of this system by the Reich, the constitutional basis on which it rests makes it much more than an emergency measure. It is a definite departure from the older system of having imperial taxes administered by the states. As yet, it is much too early to pronounce finally on the advantages or disadvantages of the change.

Probably no other feature of the changed tax system has been so much discussed as has the present apportionment of taxes among the Reich, the states and the communes. Although the severe economic necessities of the post-war years, and the need of a strong central government possessed of adequate financial

powers, have made inevitable the taking over by the Reich of many sources of taxation formerly reserved to the states, and have encouraged the practice of central collection with grants to the states (a practice which has received further stimulus from the economic weakness of some states, and the need of assisting these if national laws were to be properly administered by them and their own functions were to be adequately fulfilled), yet there has not been lacking, especially in southern Germany, a feeling that in assuming so much financial power the Reich has been endangering the position of the states and has been reducing them to a status of dependency not contemplated by the Constitution. This point of view has been stated forcefully as follows: "The final financial equalization must therefore set aside the system of financial subordination and superiority between the Reich and the states, since this system contradicts the constitutional-legal structure of the Reich, and a system of financial equality must take its place. . . . Financial equalization is and remains not merely a financial-legal problem, but above all a constitutional and political problem."<sup>52</sup>

On the other hand, it is claimed that only the method of central collection and apportionment of revenues enables the economically weaker states to maintain their independent state organization and fulfil their functions at all. The question of tax distribution is seen to be extremely complex, involving not merely financial problems, but problems of political economy in the larger sense, of technical administration, of self-government, of such political factors as power and prestige, and of the much-discussed administrative reforms.<sup>53</sup> Certainly any sweeping changes in the administrative system will be closely bound up with the collection and distribution of taxes.

<sup>52</sup> Speech by Oberbürgermeister Knorr, published in *Finanzausgleichprobleme* (1927), p. 45.

<sup>53</sup> Speech by Popitz, *Finanzausgleichprobleme*, pp. 5, 29.



## CHAPTER VIII

### THE BUDGET AND DEBT ADMINISTRATION

The budget system of Germany is governed by three important documents; the Constitution, which makes a few significant general provisions; the Treaty of Versailles, which requires certain amounts to be placed in the budget yearly; and, finally, the budget law, which lays down in great detail the budgetary procedure of the nation.

The chief constitutional provisions governing the budget are found in Articles 85 to 87, which read as follows:

All revenues and appropriations of the Reich must for each fiscal year be estimated and incorporated in the budget.

The budget shall be adopted by law before the beginning of the fiscal year.

The appropriations shall as a rule be voted for one year. In a special case or cases they may be voted for a longer period. Except in such cases the national budget law shall not contain provisions which run beyond the fiscal year or which do not relate to the revenues and appropriations of the Reich or to their administration.

The Reichstag may not, without consent of the Reichsrat, increase appropriations or insert new items in the draft of the budget.

The consent of the Reichsrat may be dispensed with in accordance with the provisions of Article 74 (Article 85).

In the succeeding fiscal year, the national Minister of Finance shall account to the Reichsrat and the Reichstag for the disposition of all national revenues, so as to discharge the responsibility of the national Ministry. The audit shall be regulated by the national law (Article 86).

Funds may be raised by loans only for extraordinary needs and as a rule only for expenditures for income-producing enterprises. Such loans, as well as the assumption of any liability by the Reich, may be undertaken only by authority of a national law (Article 87).

Other constitutional provisions are:

The finances of the Reichstag are administered by its own president according to the budget (Article 28).

Only the national President can order a plebiscite concerning the budget, tax laws, and salary regulations (Article 73, paragraph 4).

The national railroads, regardless of the incorporation of their budget and their accounts into the general budget and the general accounts of the nation, are to be administered as an independent economic enterprise (Article 92).

The Treaty of Versailles <sup>1</sup> provides for the payment by Germany to her late opponents in the World War, the Allied Powers, of damages in certain yearly sums, to be adjusted definitely by a Reparation Commission. A committee of experts appointed by this commission to study means by which Germany's budget could be balanced and her currency stabilized, prepared a report embodying the following principles, which was accepted by the Powers concerned: <sup>2</sup>

Stabilisation of currency and the balancing of budgets are interdependent.

Both are needed to enable Germany to meet her internal requirements and Treaty payments.

Balancing the budget does not merely entail provision for internal administrative expenditure.

Germany must also provide within the utmost limit of her capacity for her external Treaty obligations.

Germany will pay Treaty charges from three sources: (1) Taxes; (2) railways; (3) industrial debentures.

From her ordinary budget:

1924-25 budget may be balanced if it is free from Peace Treaty charge	
1925-26 budget receiving 500 million gold marks from special sources, may pay that sum for reparation	
1926-27.....	110 million G.M. <sup>3</sup>
1927-28.....	500 million G.M. <sup>4</sup>
1928-29.....	1,250 million G.M.

<sup>1</sup> The Treaty of Versailles may be found in RGBI. 1919, p. 687 ff. The report of the first committee of experts, with its annexes, may be found in *Verhandlungen des Reichstags*, Bd. 382, No. 5 (174 pages). For the Agreements reached at the London Conference which accepted the plan, see RGBI. 1924, pt. II, pp. 289-357.

<sup>2</sup> The principles quoted are taken from the official summary which accompanies the report. The authoritative text to which the Powers agreed is much too long for quotation. Although the summary has not the legal authority of the main text, it is a clear statement of its chief content.

<sup>3</sup> Subject to addition or reduction in certain contingencies.

<sup>4</sup> See Report of the Agent-General for Reparation Payments (S. Parker Gilbert), November 30, 1925.

This is considered a normal year and a standard payment; thereafter additional payments will be made, depending on prosperity.

Standard year. Fifth year. From interest on railway bonds and on industrial debentures, from transport tax and from budget.

Total of.....2,500 million G.M.

Thereafter 2500 million, plus a supplement computed on the index of prosperity.

“Germany made payment in full of the third Annuity, by appropriate payments into the account of the Agent General for Reparation Payments with the Reichsbank, as prescribed by the Plan. The payments were all made promptly when due, in accordance with the detailed arrangements which have been described in previous Reports. The payments actually received within the period of the third Annuity year may be summarized as follows:

	Gold marks
Normal contribution from the German budget.....	110,000,000
Supplementary contribution from the German budget.....	300,000,000
Transport tax .....	270,000,000
Interest on the German railway bonds.....	495,000,000
Interest on the German industrial debentures.....	250,000,000
Total.....	1,425,000,000

“The balance of the third Annuity, amounting to 75 million gold marks, did not become due and payable until September, 1927, the first month of the fourth Annuity year. The final instalment of the year's interest on the Railway bonds, amounting to 55 million gold marks, became due on September 1, 1927, and was paid on that date; while the balance of 20 million gold marks on account of the transport tax, fell due and was paid on September 15, 1927, out of the yield of the tax for the third Annuity year. . . .

“The fourth Annuity payable under the Experts' Plan rises to a total of 1,750 million gold marks, made up as follows:

	Gold marks
Contribution from the German budget.....	500,000,000
Transport tax .....	290,000,000
Interest and amortization on the German railway bonds.....	660,000,000
Interest and amortization on the German industrial debentures..	300,000,000
Total.....	1,750,000,000

“The fourth Annuity, it will be observed, includes for the first time the additional one per cent that is provided for amortization of the Railway bonds and the industrial debentures. It is also to be noted that the contributions from the Railway bonds, the indus-

trial debentures and the transport tax all reach their standard levels in the fourth year. The Annuity as a whole increases by a further 750 million gold marks in the fifth, or standard Annuity year, but this increase falls entirely on the contribution from the German budget, which rises from 500 million gold marks in the fourth Annuity year to 1,250 million gold marks in the fifth Annuity year.<sup>5</sup>

It is unnecessary to point out the importance of such a fixed charge against the financial resources of the German nation. The budget is naturally affected not only by the actual sums for reparations which must be included in it, but by the drain upon normal sources of taxation, especially the railways, which must contribute heavily toward these payments.

The national budget law, which was passed on December 31, 1922, regulates not only the audit in accordance with the provisions of the Constitution but the whole budgetary procedure.<sup>6</sup> The first paragraph of the law expressly provides that "The establishment of the national budget, its administration and the supervision of the same shall be governed by the provisions of this law." The law not only prescribes the general procedure for establishing the budget, but also provides means for making it effective through a special budgetary controlling agency—the court of accounts.

The budget law is divided into five principal sections, namely:

1. The establishment of the budget.
2. The execution of the budget.
3. Treasury management, bookkeeping and accounting.
4. The audit of accounts.
5. The organization and activities of the court of accounts.

**The Establishment of the Budget.** The fiscal year of the Reich, following the usage which has prevailed since 1877, begins on the first of April and closes on the thirty-first of March, and is named according to the calendar year in which it opens.<sup>7</sup>

In accordance with the usage since 1889, the budget is divided into the ordinary and extraordinary operations of the government.

<sup>5</sup> Report of the Agent-General for Reparation Payments, December 10, 1927.

<sup>6</sup> Reichshaushaltsordnung of December 31, 1922, Reichsgesetzblatt 1923, II, p. 14. (hereafter cited as RHO).

<sup>7</sup> RHO. Section 3.

In the ordinary operations belong the regular receipts of the Reich and the expenditures that are covered by the same; while in the extraordinary operations are placed extraordinary receipts, such as receipts from loans and gifts, and the expenditures that are covered by these. As extraordinary receipts are also included the levies for the national debt, the income from the sale of national property created by means of loans, and other receipts extraordinary in amount or origin.<sup>8</sup> In the plan of ordinary operations, the expenditures which by nature will not recur or will recur only at long intervals, or whose recurrence for the coming years is not anticipated, are to be shown separately.<sup>9</sup>

The budget law provides for the analysis of receipts and expenditures into a summary plan, which shows all contemplated revenues and outlays in condensed form; and into detailed separate plans according to single administrative departments or revenues and expenditures.<sup>10</sup> Beside the plans of the various ministries, there are several independent estimates, such as those of the bureau of the national President, of the Reichstag, and of the National Court of Accounts. Other superior national authorities, such as the Supreme Judicial Court and the National Finance Court, have no independent individual plans, since their budgets are included in those of the appropriate ministries to which they are related. Certain special groups of income and expenditures may also be independent from the individual estimates. This is the case, for example, with the budget for the fulfilling of the peace treaty, the budget for the general financial administration, and that of the pension fund.

Since the budget must be established by law, in accordance with article 85 of the Constitution, it must be published; the individual plans do not have the force of law.<sup>11</sup>

The budget estimates are analyzed as follows:

- First, according to large divisions such as ministries, or the general pension fund, the national debt, etc.
- Second, according to chapters, which usually include the principal administrative divisions within a ministry, or important items of expenditure.

<sup>8</sup> RHO. Section 3.

<sup>9</sup> RHO. Section 4.

<sup>10</sup> RHO. Section 5.

<sup>11</sup> On the publication of laws, see RV, Article 70.

Third, according to title, which includes such items as salaries, and particular objects of expenditure such as travel, telephone, telegraph, and other reasonable subdivisions of estimates.

Fourth, particular titles are often subdivided in the explanatory remarks.

The budget as finally passed is voted by chapter and title.<sup>12</sup>

The law deals in some detail with the particular items which are to be contained in the budget.<sup>13</sup> These include income from the alienation of property, indirect contributions to the expenses foreseen in the budget, income and expenditures of non-personal particular property, the total income and expenditure within the fiscal year from loans, whose conversion . . . takes place in the course of several years, expenditures for the establishment of enterprises or the preparation of supplies, and the like.

A deviation from the former practice of establishing net budgets<sup>14</sup> is established by Article 7 of the law, which provides that all income and expenditures, with minor exceptions, must be estimated in the budget separately and to their full amounts.

The budget, therefore, contains not merely the net results of financial operations, but all costs of management, collection, and administration. This makes possible both a closer supervision of finances on the part of the legislature and an easier control on the part of the court of accounts.

Two or three points of importance should be noted concerning the estimates. Receipts and expenditures, which vary in amount although they recur, shall be estimated if their sums cannot be foreseen, either according to the average of such receipts and expenditures for certain periods of time immediately preceding the making of the budget, or according to other principles appropriate to the explanation of the budget. Items to cover salaries, payment for the services of public officers, and payment for services rendered by persons not of official status, are to be estimated separately from one another and from other expenditures.<sup>15</sup> For all

<sup>12</sup> For an example of budgetary estimate classification see Reichshaushaltsrechnung, 1924, published April 9, 1926. Also see Amtsblatt der Reichsfinanzverwaltung, 1926, pp. 19-34. For an example of the budget bill, see Reichsgesetzblatt, 1925, II, p. 743 ff.

<sup>13</sup> RHO. Section 9.

<sup>14</sup> See von Heckel, Das Budget, Ch. 2.

<sup>15</sup> RHO. Sections 10, 11.

single and extraordinary expenditures, which involve the carrying out of a single task extending over several years, the total estimated cost and possible contributions thereto must be shown when the item first appears in the budget;<sup>16</sup> and detailed plans and estimates are to be prepared for the discussions in the Reichsrat and the Reichstag.<sup>17</sup> By requiring such information to be presented, the law intends to place the legislature in a position to plan ahead, and to pass upon the necessity and suitability of the projects presented to it by the Cabinet. National enterprises, or portions of them, which are managed as business undertakings, may be listed in the budget with their probable net results, instead of a complete account of income and expenditure, if the type of enterprise does not permit a business statement of income and expenditure. The reasons for such exceptions, however, are to be explained in the statement of the probable totals of income and expenditure. In so far as regular civil servants are employed in these businesses, the necessary situations are to be shown in the budget estimates.<sup>18</sup>

Materials for the preparation of the budget for the coming fiscal year are assembled at the proper time by the various offices whose income and expenditures are to be shown in separate independent plans, and also by the national ministers for their respective departments; and are then sent to the national Minister of Finance at a time specified by him.<sup>19</sup> The national Minister of Finance approves, on his own responsibility, the plans of the individual offices and prepares the draft of the national budget. In so doing he may alter or strike out requests of which he does not approve, after conferring with the offices concerned. At any time, however, before the completion of the budget, the ministers concerned may require a vote of the Cabinet upon questions of fundamental or very great importance.<sup>20</sup>

The draft of the budget is confirmed by the Cabinet. Changes in the estimates submitted by the presidents of the Reichstag and the court of accounts are in every instance to be acted upon by the entire Cabinet as well as the national Minister of Finance.

<sup>16</sup> RHO. Section 13.

<sup>17</sup> RHO. Section 14.

<sup>18</sup> RHO. Section 15.

<sup>19</sup> RHO. Section 19.

<sup>20</sup> RHO. Section 21.

If the budget plan alters the figures given by the President of the Reichstag, and he does not agree to the alteration, there is attached to the budget plan the draft of an individual estimate according to his plan.

If the Cabinet decides to include an estimate or obligation in the budget against the opinion of the national Minister of Finance, the latter has the right of veto. In this case, such expenditure or obligation can only be placed in the budget, if in another vote a majority of the entire Cabinet vote for it, and the Chancellor votes with the majority.<sup>21</sup>

The budget law has, therefore, greatly strengthened the position of the national Minister of Finance as against the other Ministers, giving him an almost unshakable power over financial affairs, which involves as a natural consequence, power over governmental planning. It has also strengthened the position of the Chancellor, since unless he votes with the majority of the Cabinet, their majority vote is of no avail. Through the budget law, therefore, the Minister of Finance and the Chancellor together are given greater power over finance than all the other members of the Cabinet,<sup>22</sup> though the Cabinet as a whole is theoretically responsible to the Reichstag for the budget bill.

In regard to the parts of the budget which are prepared independently from the Minister of Finance, such as the estimates of the President, the Reichstag, and the Court of Accounts, no parliamentary responsibility exists for those preparing them. The President, of course, may be impeached for any wrongful violation of the Constitution. The officers responsible for the preparation of their own budgets, such as the President of the Court of Accounts, are controlled largely according to general provisions of law, especially according to the provisions of the law of officers.<sup>23</sup>

Since the annual budget must be established according to law, the Cabinet must lay before the Reichsrat and the Reichstag not only the budget estimates, but also the draft of a corresponding law, the so-called budget bill. This bill must be presented to the Reichsrat for consideration not later than November 1, and to the Reichs-

<sup>21</sup> RHO. Section 21.

<sup>22</sup> For a more extended treatment of this subject, see Chapter V.

<sup>23</sup> Schulze and Wagner, *Reichshaushaltsordnung*, p. 61.



tag not later than January 5.<sup>24</sup> In case this provision were not complied with, the Reichstag would undoubtedly have a right to bring impeachment proceedings before the High Court of State.

Before discussing the way in which the budget is handled in the legislative body in Germany, it is well to state the general position of the legislature in respect to the budget. Both the Constitution and the budget law make it very evident that the legislature is in no sense an initiating authority, since the Cabinet is responsible for the introduction of the budget. Furthermore, the legislature is subject to several severe limitations in respect to its action upon the budget bill. The first of these is found in Article 85 of the Constitution, which provides that the Reichstag may not, without the consent of the Reichsrat, increase appropriations or insert new items in the budget bill. The consent of the Reichsrat, however, may be dispensed with under the conditions laid down in Article 74 of the Constitution.<sup>25</sup>

The two possible unfavorable actions of the Reichsrat upon a budget bill have been discussed by a German author, as follows:<sup>26</sup>

The veto of the Reichsrat can always be entered only against the law as a whole, even if the Reichsrat desires merely the alteration of one paragraph. . . . It thus happens, for example, that if the Reichsrat is dissatisfied with the omission of one single item of expenditure by the Reichstag, and therefore vetoes the national budget law, the budget does not remain in effect in general, but the Reichstag must act again upon the entire . . . bill.

However, if the Reichsrat merely refuses consent to the increase or insertion of items of expenditure, only the items objected to

<sup>24</sup> As to the nature of the budget law, see Anschütz, *Die Verfassung des deutschen Reichs*, p. 25. He remarks: "The budget remains, even in the guise of a law, what it really is by nature: An administrative act."

<sup>25</sup> Article 74 reads: Laws enacted by the Reichstag shall be subject to veto by the Reichsrat. The veto must be communicated to the National Ministry within two weeks after the final vote in the Reichstag, and within two additional weeks must be supported by reasons.

In case of veto, the law must be presented to the Reichstag for reconsideration. If no agreement upon the matter is reached between the Reichstag and the Reichsrat, the President of the Reich may within three months submit the matter in dispute to a referendum. If the President fails to exercise this right, the law shall not go into effect. If the Reichstag overrules the vote of the Reichsrat by a two-thirds majority, the President shall within three months promulgate the law in the form adopted by the Reichstag or else shall order a referendum.

<sup>26</sup> Braun, P. E., *Die Ausgabeninitiative des Parlaments, etc.*, in *Archiv des Öffentlichen Rechts*, 1923-24; Neue Folge, Bd. 6.

remain in suspense. The remainder of the budget is to be promulgated by the national President.

Another limitation upon the legislature is found in Article 85 of the Constitution, which provides that the budget may contain no provisions which extend beyond the fiscal year, or which do not deal with revenues or expenditures or their administration. Thus the legislature cannot use the budget as a disguise for acts which abrogate existing laws or legal establishments or in any way set aside the obligations of the Reich. No "riders" of substantive law can be attached to appropriations.

The budget right of the Reichstag is . . . no unlimited right of granting and refusing. It is exercised within given legal limitations. The Reichstag is obliged to grant legally necessary income and expenditures . . . while it has a free right of denial of income and expenditures requested through no legal necessity.<sup>27</sup>

The national budget law makes no provision for legislative action on the budget, nor does the order of business of the Reichstag make any definite provision for such action. The procedure, however, is as follows:

After the budget estimates and the budget bill have been finally prepared and passed upon by the Cabinet, the Reichsrat must be asked to give its consent to the introduction of the bill into the Reichstag, in accordance with Article 69 of the Constitution. If this consent is withheld, the Cabinet nevertheless introduces the bill, but in so doing, it explains the divergence of views between the Reichsrat and itself.<sup>28</sup> Accompanying the budget bill are the complete estimates and supporting statements; and an explanation<sup>29</sup> of its chief features is made by the Minister of Finance.

Before the opening of the discussion upon a budget bill, commissioners are appointed by the Cabinet and the independent offices,

<sup>27</sup> Anschütz, p. 252.

<sup>28</sup> See *Verhandlungen des Reichstags*, I Wahlperiode, 1920, Nos. 345 and 5468, for the motions introducing the budgets of 1922 and 1923; *Ibid.*, II Wahlperiode, 1924, No. 131, for the introduction of the 1924 budget; *Ibid.*, III Wahlperiode, No. 6, for introduction of the 1925 budget; I Wahlperiode, 5468, gives a statement of the objections by the Reichsrat.

<sup>29</sup> For an example of this, see *Verhandlungen des Reichstags*, I Wahlperiode, 1920, Anlagen, No. 5584.

to defend the separate budgets before the Reichstag and the budget committee.<sup>30</sup> These commissioners may participate in debate; and since most of them are permanent officers of high rank, they are able to speak with considerable authority.

Like drafts of laws and treaties, the budget bill goes through three readings in the Reichstag. In the first only its general propositions are discussed, and no amendments may be moved until after the close of the discussion. Following the first reading the bill is referred to the budget committee.<sup>31</sup>

The budget committee,<sup>32</sup> which is at present composed of twenty-eight members, exercises very important functions. It not only acts upon the budget proper, but it also has large powers in respect to related matters. Thus, it reports on pending bills which may affect the budget,<sup>33</sup> replies to proposals and interpellations,<sup>34</sup> reports on affairs in which it acts with other committees concerning matters in which budgetary questions are necessarily involved,<sup>35</sup> and reports on petitions which refer to the budget.<sup>36</sup>

Important as these functions are, however, they are but means to its chief end, its work as an agency for helping the legislature to make final decisions regarding the budget. It examines every item of the budgetary proposals as brought in by the Cabinet, and recommends the acceptance, rejection, or alteration of each; or possibly the insertion of new items. It also reports upon any other matter coming before the legislature which may affect the estimates, including proposed amendments to the budget bill.<sup>37</sup> It may propose amendments on its own account, covering not only amounts, but procedure, application, control, and other relevant matters.

The report of the committee on the budget proper is usually made as a series of reports upon portions of it. These special re-

<sup>30</sup> Constitution, Article 33. For list of commissioners on the budget for 1926, see *Verhandlungen des Reichstags*, III Wahlperiode, 157 Sitzung, February 10, 1926. The official position of each commissioner is mentioned here.

<sup>31</sup> *Geschäftsordnung für den Reichstag*, Sections 37, 38.

<sup>32</sup> *Handbuch für das deutsche Reich*, 1926, p. 5.

<sup>33</sup> *Verhandlungen des Reichstags*, III Wahlperiode, 1024-26, Nos. 1839, 2348, 2352, 2441, 2480, 2511, 2529.

<sup>34</sup> For examples, see *Ibid.*, No. 1835.

<sup>35</sup> *Ibid.*, Nos. 1702, 1703, 1879, 1878, 1940, 2197, 2205, etc.

<sup>36</sup> *Ibid.*, No. 2197.

<sup>37</sup> See *Ibid.*, Nos. 1669, 2475, 2346, 2388, 2543, 2846, 2630, 2826.

ports cover separate ministries, or certain large items of expenditure such as debt payments, and are not presented at any one time but continue over a period of several months. They ordinarily follow the budget estimates in detail; on one side of the page are the proposals of the Cabinet, and on the other the decisions of the committee. Most of the reports are divided into three parts, as follows:

1. A motion that the legislature adopt the particular part of the budget presented in the report, with the changes suggested by the committee.
2. Resolutions recommended to the Reichstag.
3. Recommendations as to the action of the legislature in respect to petitions affecting the budget.

The proposals of the budget committee in regard to each separate part of the budget go into great detail. The committee increases and decreases individual items, inserts new items, eliminates items, and provides limitations upon expenditures; as, for example, that specified offices or officers shall be discontinued after certain dates.

The resolutions recommended by the committee are of various sorts. They may be in the nature of service regulations,<sup>38</sup> or they may be requests made to the Cabinet<sup>39</sup> to do certain things, find out certain things, make investigations, and the like. In its motions for the disposition of petitions which have been referred to it, the committee as a rule suggests that they be assigned to the national Cabinet as material for its consideration, that they be placed upon the order of the day, or that they be laid on the table.

How extensive and how significant are the changes made by the budget committee in the bill as presented by the Cabinet? In the 1922 budget, out of more than six hundred chief items, the budget committee changed nearly one-half by increasing, decreasing, eliminating, or inserting. This does not include the changes made in respect to salary grades, limitations, and the like, which were also numerous. A study of any other budget will show practically the

<sup>38</sup> For instance, the report of the committee regarding the budget for the Ministry of the Interior, in the budget bill of 1922, provided that for women officers and assistants, the fact of having a child out of wedlock should be neither ground for dismissal nor the subject of disciplinary procedure. See *Verhandlungen des Reichstags, I Wahlperiode, 1920, No. 3870*.

<sup>39</sup> See *Ibid.* for illustrations.

same situation. It is interesting to note what kind of changes are made. From an examination of the budgets passed since the new Constitution was established, it is evident that the committee has been particularly interested in cutting down the personnel in the departments; while the insertion of new items or the increase of items has been largely in the field of social amelioration or other social functions. The budget committee very often places many more restrictions upon the use of moneys than were found in the budget as submitted by the Cabinet.

Following the committee's report, the budget bill, or rather such part of it as may be covered by the report, comes before the Reichstag for second reading, at which time the most important vote takes place. At this reading most of the amendments proposed by individual members are discussed. These amendments may refer to either the Cabinet plan or the report of the budget committee. They are written, and are supported by the member introducing them and at least fifteen seconds, in order to conform to the rules of procedure. A comparison of the final report of the decisions of the Reichstag in the second reading, with the recommendation made by the budget committee, shows that very few of these amendments are finally incorporated into the budget.<sup>40</sup> On the other hand, most of the recommendations made by the budget committee seem actually to be incorporated into the budget as finally passed. It must not be supposed, however, that these numerous changes are of sufficient importance, as a rule, to constitute a virtual rejection of the Cabinet's plans. The estimates of the Cabinet are the basis of discussion, and the budget as passed is not the creation of the Reichstag, but of the Cabinet, with modifications by the legislature.

While the fate of an ordinary bill is usually decided by the second reading, this is not always true of the budget bill, because of political, economic, and social conditions. Therefore, budget bills are occasionally amended even at the third reading. Yet since the

<sup>40</sup> Compare the decisions of the Reichstag in the second reading for the 1922 budget, for example, with the report of the budget committee. See *Verhandlungen des Reichstags, I Wahlperiode, No. 4374*, which gives the conclusions of the Reichstag; also the various reports prepared by the committee on the budget. For these reports, see *Sach- und- Sprechregister, Verhandlungen des Reichstags, I Wahlperiode, 1920, Bd. 362, under Reichshaushalt for 1922*.

second reading is accepted as quasi-decisive, and since on at least one occasion, as we shall see, the results of the second reading were taken as the basis for expenditures during the interim between the lapse of the former budget and the passing of the next budget, it may be assumed that as a rule the amendments introduced at the third reading do not vitally affect the final outcome.

Experience has shown that the Reichstag is likely to accept the figures of the government's budget bill in regard to what may be called routine matters, while it displays a tendency to alter items which deal with general social policy. This is due in part to the new interest in social legislation which has developed during recent years, and in part to political reasons. The complicated party situation in the Reichstag makes every government feel uncertain of its position, and so prevents the uncompromising attitude on the part of the national Minister of Finance and the Cabinet which might be taken if the government were confident of strong and united parliamentary support.

**Supplementary and Preliminary Budgets.** Although the national Constitution and the national budget law recognize only annual budgets, the practice has developed of bringing in supplementary budgets. This was most frequent, naturally, during the years of inflation. There were four supplementary budgets in 1918, three for 1919, one for 1920, five in 1921, twelve in 1922, while none seem to have been needed in 1924 or 1925.<sup>41</sup> The disappearance of supplementary budgets naturally coincides with the placing of Germany upon a sound economic basis.

During the first few years after the new Constitution was adopted, it happened repeatedly that the budget bill was not passed by the Reichstag until several months after the beginning of the fiscal year. It became necessary, therefore, to pass temporary measures granting the administration the right to carry on financial affairs during this period. The "temporary regulations of the budget," which have been employed from time to time, have taken various forms. One example will suffice. On March 26, 1923, only a few days before the beginning of the new fiscal year, the legislature authorized the administration to make expenditures on

<sup>41</sup> For a list of the supplementary budgets and the times at which they were passed, see index of Reichsgesetzblatt for each year, under Reichshaushalt.

two different bases: First, concerning that part of the budget which had been discussed at the second reading, the Cabinet might act in accordance with the vote of the Reichstag at that time. Second, regarding the remainder of the budget, expenditures could be made in accordance with the decisions of the budget committee of the Reichstag. This authorization was to extend until the establishment of the permanent budget, which actually took place on the fourth of June that year. In order to secure the necessary means for covering obligations, the national Minister of Finance was authorized to issue treasury drafts to the sum of five hundred millions of marks for the ordinary budget expenditures, and to borrow five hundred millions of marks in the way of temporary loans, in order to provide for non-recurrent extraordinary expenditures and to meet other specified obligations.<sup>42</sup> Several other important provisions are to be found in this authorization law.

**The Execution of the Budget.** Although the budget law contains various provisions governing the way in which the means provided by the budget shall be applied, it does not cover the whole field. Other laws, such as the salary law, the law of officers, pension laws, laws for the care of war invalids, and the like, exercise a good deal of control. The budget law, however, does govern almost completely the procedure which must be followed.

Section 25 of the budget law provides that the revenues and expenditures of the Reich shall be administered according to the budget, and that the word "budget" shall be defined to include the laws which alter the budget act, supplement it, or authorize a revenue or expenditure not contained in it. This means that the administration in executing the budget must follow the laws controlling it. It does not mean, however, that the administration cannot exercise discretion within the legal limits. This is particularly true in respect to expenditures permitted through the budget. The question whether the administration will carry out certain undertakings authorized by the legislature, is frequently not a question of law but a question of policy. Since the administration in Germany is responsible for both the formulation and the execution of policy, it applies the means granted it by the legislature with a rather free hand, being responsible to the legislature for results.

<sup>42</sup> Reichsgesetzblatt, 1923, II, p. 181 ff.

Of course it must keep within the specific limitations imposed upon it by the budget law, among which must be noted the requirements of section 30, that the sums voted may be applied only to the purpose designated in the budget, so far and so long as such purpose exists; and only within the fiscal year. However, transfers and the application of unused balances may be provided for in the budget itself, so that adaptation to circumstances is not beyond the power of the administration.<sup>43</sup>

The law provides (Section 26) that the budget grants are to be administered in a business-like and economical manner. To determine whether the administration has observed this provision is one of the chief functions of the Court of Accounts,<sup>44</sup> which will be discussed later.

The functions of the national Minister of Finance in regard to the efficient and economical administration of the budget are quite extensive. By two cabinet decrees of October 9, 1920, and October 12, 1923, the Minister of Finance is given active participation in all plans for new laws, new organizations, or for the increase of existing organizations, as well as plans of measures which may be of financial significance. Before they are completed, such plans must be communicated to the national Minister of Finance, and their further prosecution may only be undertaken when he has approved them. Legislative proposals which have already been laid before the Reichstag or the Reichsrat may be withdrawn upon the proposal of the Minister of Finance. Upon his demand, existing national establishments are to be limited or abolished if he considers such action necessary for the maintenance of a sound financial position. The department affected has the right of appeal to the Cabinet, under Article 57 of the national Constitution, but the Minister of Finance has a right to veto the Cabinet's decision. We have already seen that such a veto is final and conclusive unless the Cabinet, after an advisory hearing of the commissioner of economy, overrules it by a majority decision in which the Chancellor votes with the majority. The Minister of Finance can also demand that he or his deputies shall be consulted as a preliminary to the preparation of all measures which have a financial significance, or that such affairs be regulated through

<sup>43</sup> See RHO., Sections 31-35, 100, *et passim*.

<sup>44</sup> RHO. Section 96.



agreements between the Minister concerned and the Minister of Finance. He may provide that individual officials in the various ministries, without prejudice to their positions within their ministries, shall be bound in matters of financial significance, to report to him and to receive instructions from him.

As a further means of securing economy, special budgetary officers are placed in the offices of both the higher public authorities, and the authorities immediately subordinate to them. The rights and duties of such agents are definitely laid down in a decision of the national Cabinet of November 7, 1923. This provides that it shall be their duty to serve the financial interests of the Reich rather than the special concerns of the individual departments; and particularly to watch that the grants made to the departments for their expenses are not exceeded and that the provisions of the decree of October 12, 1923, are observed. In order to attain these ends they are given a far reaching right of coöperation in administrative measures, particularly in regard to orders of payment; as well as the right to require information from the other members of their department, with the exception of the Minister and his deputy. They also possess a right of veto against any measure or order of payment, which can only be set aside by a decision of the Minister or his acting deputy (the secretary of state in charge).

The budget law provides that there shall be only one fund, in so far as nothing to the contrary is provided for in the budget or special laws.<sup>45</sup> Under this provision fall only the national income and expenditures. Income and expenditures of juristic persons are not included in this provision, even if the Reich itself owns most or all of the shares of stock.

Several provisions deal in detail with the application of appropriations: According to Section 30, sums voted may be applied only to the purpose designated in the budget, so far and so long as such purpose exists, and only within the fiscal year. Besides the appropriations expressly authorized to be carried over and the funds voted for single and extraordinary expenditures, the unpaid claims for expenditures falling under particular appropriations remain payable beyond the fiscal year. However, unless the budget provides otherwise, this is valid in regard to single and extraordin-

<sup>45</sup> RHO. Section 29.

any expenditures, only until the conclusion of the audit for the third fiscal year following their authorization. In regard to buildings, the fiscal year in which the building in its essential parts is placed in use shall be taken instead of the fiscal year of final authorization. Supplementary grants for an expenditure which can be carried over, end with the next appropriation for the same purpose. Exceptions may be permitted in the budget for the business administration of railways, and the postal service, as well as the national printing office.

If there are in the budget more appropriations made than funds to cover them, the funds remaining from one grant may be utilized for the lacking balance of another such grant, provided that they are transferable. Continuing appropriations remain transferable for mutual protection, until the last of the grants concerned is finally ended.<sup>46</sup> Express authorization in the remarks accompanying the budget is required for reciprocal payments or transfers. The note authorizing such usually reads: "The means are mutually available for payment with the sums appropriated for title X." In practice it has developed that one single title can be made applicable to the costs of another, while the second cannot be applied conversely to the costs of the first.<sup>47</sup>

The appropriations made in the budget must be so administered that they cover all expenditures falling under the same purpose. If an officer authorizes an outlay in opposition to this provision, or if he takes measures which make such an outlay necessary, or if he knows or is in the position to know, that through the measures or outlays an overdraft of the funds appropriated or a supplementary vote of funds for the same purpose will become inevitable later, he is responsible for the outlay brought about by him, in the same way as if this were a budget overdraft. This does not hold, if the outlay or measure has been rendered absolutely necessary by stress of circumstances.<sup>48</sup>

Budgetary overdrafts and appropriations not included in the budget, including increases in continuing appropriations, and similar measures through which the Reich may incur obligations for which funds were not provided in advance, require in advance the consent

<sup>46</sup> RHO. Section 31.

<sup>47</sup> See Schulze and Wagner, pp. 102-03, for a discussion of this practice.

<sup>48</sup> RHO. Section 32.

of the Minister of Finance. They may be allowed only exceptionally and in case of undeniable need.<sup>49</sup> In this manner exceptional conditions can be met without affording too great an opportunity for the administration to break away from legislative control; since a certain degree of flexibility is allowed for, in case of urgent needs. For overdrafts and special appropriations which are not sanctioned, the officer making them is financially liable. This liability does not exist, however, if the officer had to act immediately to avoid an unforeseen danger to the Reich, and if no more was spent than the emergency necessitated; nor does it exist if the national Minister of Finance is informed immediately of the measure or order and if he gives his consent to the overdraft. These provisions would seem to allow for the meeting of emergencies, and yet at the same time to provide a sufficient control to insure that the right of overdraft will not be abused.

Sections 36 to 41 of the budget law deal with salaries, grants, and pensions to civil servants. Salaries and other payments for service are to be authorized by the administration only according to the provisions of the law dealing with them, and only if the budget provides the necessary means.<sup>50</sup> Out of grants in aid compensation may not be paid to employees of the same administration, who hold a regular position or are permanently employed and receive their salaries from other appropriations (Section 37). Extraordinary grants and assistance may be applied to civil servants only from the allowances specified in the budget for this purpose (Section 38). Official dwellings are provided only in accordance with the requirements of the budget and the salary laws (Section 40).

Not only must detailed plans and unit costs be taken as the basis for building operations, except for minor projects financed from current funds, but without the consent of the Reichsrat and the Reichstag no changes are to be made in the plans and supporting statements which were given in the budget, except in so far as any alteration and any overdraft thereby effected are unimportant (Section 45).

<sup>49</sup> RHO. Section 33.

<sup>50</sup> RHO. Section 36. It is interesting to note in this connection that the salaries are not established through the budget law, but by a special law, the so-called salary law. The present salary law is found in RGBI., 1927, I, p. 349.

No property of the Reich can be alienated except for a price equal to its full value, unless exceptions are made therefor in the budget. Plots of land or portions of such may be alienated only with the consent of the national Finance Minister; and the alienation of parcels of land of high value or of special importance requires the consent of the Reichsrat and the Reichstag, unless an exemption from the rule is required by pressing economic circumstances. In the latter case the Reichstag and the Reichsrat are to be notified immediately. Alienation of parcels of land of particular artistic, historical, or cultural value, requires in any case the consent of the Reichstag and the Reichsrat. An exchange of property is permissible only when it is necessitated by economic considerations. It requires the consent of the Minister of Finance, and likewise the immediate notification of the Reichstag and the Reichsrat (Section 47).

In view of the active participation of the nation in economic enterprises, during the World War and afterward,<sup>51</sup> Section 48 of the law is of great importance. It provides that in establishing an enterprise with its own legal personality (as distinguished from a purely governmental undertaking), which has as its object a manufacturing or other economic undertaking of great scope, the Reich shall only participate, except where it enters as a partner, if the enterprise takes the form of a joint stock company, of a sleeping partnership, or of a limited liability company, for which by statute a supervisory council is to be provided. Any participation requires the consent of the national Minister of Finance; and the Reichsrat and the Reichstag are to be given notice of such participation. Following such notice, the enterprise may be repudiated in whole or in part. In establishing such an enterprise the Reich is to secure to

<sup>51</sup> "For the participation of the Reich in enterprises with their own legal personality, there has heretofore been no special provision made in the national budget. Enterprises of this sort were established during the war and after its close, for the production of the material for war, for the supplying of the necessities of life, for the carrying out of economic undertakings in various fields, etc. . . . The budget law aims at this: that the possibility of participating in an enterprise with legal personality must be preserved to the Reich as it has existed hitherto. The necessity arose (during the war, etc.) . . . (for) a direct financial connection of the Reich with private enterprise in various economic fields—as, for example, shipbuilding—also from the necessity of influencing prices. . . ." Schulze and Wagner, note upon Section 48. See Chapter XVI.

itself, through suitable stipulations, the requisite influence upon the undertaking. Insofar as the object pursued permits it, the Reich retains the right of appointing one or more members of the supervisory board, if the share of the Reich in the original capital amounts to at least one-third, or if its interests are considerably involved.

The status of a national officer as a member of the supervisory council is twofold. He represents in the council the interests of the Reich, especially the financial interests; and it is his function to see that the business is properly conducted from this standpoint. On the other hand, he acts as an ordinary business man in the interests of the corporation. In case of conflict, of course, the interests of the enterprise must give way to the interests of the Reich.<sup>52</sup>

The company must also be legally bound to allow the business to be examined by an auditing company selected through the supervisory council of the company and acceptable to the national Minister concerned (Section 48). This provision is considerably strengthened by Section 113 of the budget law which provides that the auditing company shall be acceptable to the Court of Accounts and shall act in conjunction with it. The requirements as to audit are retroactive in case the Reich possesses or acquires shares in an existing corporation, if its participation is sufficiently important. The Reich may enter, as a partner, into a partnership in the sense of the law of May 1, 1889, only if the responsibility of the partners for the liabilities of the firm is limited by statute beforehand to a definite sum. Participation in a partnership requires the consent of the national Minister of Finance (Section 48).

Several sections of the budget law deal with contracts. Contracts may be made with officers and employees of the nation by the administration to which they belong, only with the consent of the national Minister concerned. He may delegate his authority to a next lower office. Contracts of the Reich may be neither abandoned nor altered to its disadvantage in the way of agreement, except by the national Minister concerned, in conjunction with the Minister of Finance. Here also the authority may be delegated to the office immediately lower, in regard to matters of minor importance. If the contract has had the consent of the Reichsrat or the States'

<sup>52</sup> RGBI. p. 55.

Committee or the Bundesrat and the Reichstag, any deviation from it also requires the consent of the Reichsrat and the Reichstag.

Contracts made on account of the nation must be published, in so far as the nature of the business and special circumstances do not necessitate a departure from this rule. Uniform principles for the making of contracts are to be established by the national administration (Section 46).

Contract penalties may be remitted or caused to be paid, in whole or in part, with due consideration to fairness, by the national Minister concerned. If through the failure to fulfil the contract the Reich has suffered some injury, he acts in connection with the Minister of Finance. This authority may be delegated to the officers next in rank.

Claims against officers or employees which arise from treasury or accounting mistakes, and claims against officers, employees, or workers, such as the payment of penalties following culpable conduct in service, may be remitted only by the national President on the basis of authority delegated to him. The decree requires the countersignature of the national Minister concerned and of the national Minister of Finance. The remission of a claim in cases other than those contained in the two paragraphs cited above, unless otherwise provided by law, requires a vote of the national Cabinet in every instance (Sections 49-54).

**Treasury Management, Bookkeeping, and Accounting.** According to the budget law, the general principles of treasury management and bookkeeping are to be established uniformly for the entire national administration by a decree of the national Cabinet (Section 55). In the annual budget accounts the income and expenditures are to be reported under the same divisions and subdivisions used in the budget (Section 72). Transfers of moneys authorized by the budget to the subordinate offices with independent right of participation shall take place after the presentation of an attested individual report or balance sheet, or by special settlement. The national Minister concerned decides whether the balance sheets have been prepared on the basis of the budget (Section 56). In other words, the accounting classification is to be thoroughly integrated with the budgetary classification, thus paving the way for a significant audit of accounts and the establishment of efficient

budget estimates. Examination of the budgets and the accounts shows that such integration actually exists. It is possible to trace any budgetary grant through the court of audit.

Depositories of national moneys may make payments only upon the authorization of the responsible national Minister or of the officers entrusted by him with independent power of authorization. The latter may authorize payments beyond the sums entrusted to them only with the consent of the responsible national Minister (Section 58). In this way the responsibility is directly placed upon those who alone can be held responsible for the carrying out of legislative instructions.

An unexpected examination is given to depositories at least annually, and to all administrations of supplies at least every two years. Exceptions require the consent of the national Minister of Finance. In all other respects the responsible national Minister makes decisions as to the examination (Section 60). The law provides for only a minimum number of examinations. The Minister concerned may require further examinations or may determine upon unexpected examinations. Further conditions as to the examination may be ordered by the competent Minister with the consent of the Minister of Finance.<sup>53</sup>

According to Article 86 of the national Constitution, the Minister of Finance, in the fiscal year following the operation of each budget, must account to the Reichsrat and the Reichstag for the disposition of all national revenues, in order to discharge the responsibility of the national Ministry. This accounting follows, throughout, the accounting governing the budget. In other words, the examination and approving of the budgetary accounts is the method by which the accounts of the Ministry are examined and its financial transactions approved by the legislature. The depository accounting constitutes the basis for the budgetary accounting, in that the final accounts of the national budgetary accounting must correspond with the entire records of all the depository accounts, upon which they are based.<sup>54</sup>

<sup>53</sup> Schulze and Wagner, p. 171. These authors give the following definition of depositories: "Depositories are all national offices, which, whether for a longer or a shorter time, are equally entrusted with the continuous receipt and payment of money or other evidences of property on account of the Reich."

<sup>54</sup> *Ibid.*, p. 179.

The budget law, therefore, makes special provisions for depository accounting. Its provisions provide that the depositories must make reports for every fiscal year. In regard to temporary expenditures, exceptions may be permitted with the consent of the court of audit. The report is made on the basis of an audit of the books of the depositories. In the auditor's reports the income and expenditures are to be arranged as in the budget. These reports must agree in detail and *in toto* with the established showing of the depository books. Further instructions in regard to the formal regulation of the accounts and vouchers are left to the court of audit, after consultation with the national Minister concerned.<sup>55</sup>

The law provides with great care for the accounting for receipts and expenditures. Its provisions, however, are too detailed to be considered here. As a single example of its requirements, may be cited the section dealing with the information which is to be supplied in the accounts of the national budget.<sup>56</sup> This information is:

In respect to receipts:

1. The actual income received (net income).
2. Income arrears; that is, the amount by which the receipts fall short of the estimates, not including receipts which are to be credited to the income-divisions for the following fiscal year.
3. The sums of the net income and the income arrears.
4. The income figure fixed in the budget (estimated receipts).
5. The surplus of receipts remaining from the preceding fiscal year.
6. The sum of the estimated receipts and the surplus.
7. The surplus or shortage of the sum under No. 3 in respect to the sum under No. 6.

In respect to expenditures:

1. The actual expenditures made (net expenditures).
2. The claims to be carried over to the following year on the basis of No. 30 (obligations).
3. The sum of the actual expenditures and the obligations.
4. The total expenditure fixed in the budget (estimated expenditure).

<sup>55</sup> RHO. Section 66.

<sup>56</sup> RHO. Section 77.



5. The claims remaining from the preceding year.
6. The sums of the estimated expenditure and the remaining claims.
7. The surplus or the shortage of the sum under No. 3 in respect to the sum under No. 6.
8. The sum of budget overdrafts which are to be approved, or expenditures outside the estimate.

By this information and the supporting statements, the legislature should be greatly aided in passing upon the results of budget administration.

The national budget accounts are to be accompanied by:

1. A statement of the total sums deposited to the individual administrative departments according to legal provisions, or with legal authorization, or through a decision of the national administration.
2. A statement of receipts not foreseen in the budget, arising from the alienation of national property or rights.

The presentation of the first statement can be omitted with the consent of the Reichstag and the Reichsrat.<sup>57</sup>

Expenditures above and outside of the estimates are to be reported in an appendix to the national budget report.<sup>58</sup>

The accounting of national enterprises which are administered in a business-like way is to be carried on either according to the standards set for the entire national administration by the national Cabinet,<sup>59</sup> or according to the rules of commercial double-entry bookkeeping, and, if possible, of business management accounting as well. Exceptions are permissible with the consent of the court of audit. The business year of these enterprises is to coincide with the national fiscal year, unless exceptions are permitted by the Minister of Finance. The persons vested with the management of the undertakings are responsible for the use of moneys and for settlement.

For those undertakings in which the accounts are kept according to the principles of commercial double-entry bookkeeping, instead of the accounts there shall be made an inventory, a balance sheet, and profit and loss accounts; and the business must be duly closed.

<sup>57</sup> RHO. Section 79.

<sup>58</sup> RHO. Section 80.

<sup>59</sup> RHO. Section 55.

In all other cases the general principles of treasury management, bookkeeping and audit shall apply.<sup>60</sup>

**The Audit of Accounts.** The audit of accounts by a special national court, the Rechnungshof, followed by the discharge of the administration from its responsibilities in respect to the budget by the Reichstag and the Reichsrat, constitutes the final step in budgetary procedure concerning any one fiscal year. Following the constitutional mandate to the effect that the auditing of the budget accounts is to be regulated by national law,<sup>61</sup> the legislature has devoted a chapter of the budget law (Chapter IV) to the subject of audit. It is here provided that the supervision of the entire budgetary administration, as well as the audit of the various reports of such establishments, institutions, and properties, as are managed entirely by national authorities or by officers who are appointed by the order of the Reich, or such as are listed in the budget to be audited, shall be the duty of the national Rechnungshof<sup>62</sup> in accordance with the standards set forth in the law. The right of supervision is not strictly limited to the audit of accounts. In fact, several sections of the law bestow upon the court special rights of control over administration, either directly or through its intervention in examining, standardizing, and measuring.<sup>63</sup>

The accounts and books which are to be laid before the Rechnungshof include:

The accounts of the execution of the budget, including income and expenditures outside of the budgetary plan, accounts of the whole non-money property of the Reich, the books and supporting accounts of business undertakings of the Reich, accounts of such establishments, institutions, and properties, as are managed entirely by national authorities or by officers who are appointed by the order of the Reich, without participation in the audit by those interested; or such as are listed in the budget to be audited.<sup>64</sup>

Several different kinds of accounting and auditing procedure are provided for in the act.<sup>65</sup> The standard procedure is that in

<sup>60</sup> RHO. Sections 85-86.

<sup>61</sup> Article 86.

<sup>62</sup> The term "Rechnungshof" has been variously translated as court of accounts or court of audit. Since its functions are far wider than either of these terms would indicate, it has seemed best to use the word untranslated.

<sup>63</sup> See Sections 96 (Nos. 3 and 4), 97, 98, 103, and 104.

<sup>64</sup> RHO. Section 88.

<sup>65</sup> Part IV.

which all accounts with supporting documents are sent to the Rechnungshof at its seat of business and are examined there. The unprecedented amount of business following the war, however, has necessitated the adoption of various other methods. The law provides that the Rechnungshof can permit opinions and memoranda to be examined by agents at the regional offices. It can also, if it sees fit, allow the auditing to be taken over by commissioners at the seat of the accounting office or one of the subordinate accounting offices, or (in agreement with the national Minister concerned) at some other office; or to be handled at its own office by a single member (Section 90). The court has frequently adopted the procedure of having the accounts examined at the local office through commissioners, or with a member of the court as a commissioner. This procedure has great advantages in that it spares superfluous accounting work, saves the time formerly taken in the sending back and forth of memoranda, and accelerates auditing procedure. In general, important differences between the authority being examined and the commissioners cannot be settled on the spot but must be referred to the court. When, however, one of the members of the court acts as a commissioner, it is possible for him to arrive at a solution of most of the difficulties which do not involve the full power of the collegial court.

Joint audit by the administrative authority and a commission of the court is also possible, according to Section 90; and has been adopted in many cases since the war. The court itself regulates the procedure, and the selection of commissioners or representatives of the Rechnungshof is made by the president of the court.

The Rechnungshof, in agreement with the national Minister concerned and with the national Minister of Finance, can establish permanent auditing offices of the court at the seat of the authorities, subject to the later possible grant of the requisite means in the budget. These are subordinate to the court in work and in personnel. Other deviations from the above methods are also used.

Which one of the procedures is to be adopted, depends upon circumstances and is determined by the court itself, with the object of carrying on an adequate accounting and auditing control with the smallest personnel, the slightest expense, and the least expenditure of time that can possibly be employed.<sup>66</sup>

<sup>66</sup> See Schulze and Wagner, p. 226.

Unless the type of audit demands some other procedure, the accounts are to be given a preliminary audit by the appropriate authorities. At this time, if it has not been done earlier, the vouchers are to be examined and certified by auditing methods, and the accounts with the vouchers are to be audited in formal and expert fashion. The result of the preliminary audit is to be communicated to the Rechnungshof, or, on occasion, to its representative or commissioner, with a copy of the accounts accompanied by the necessary explanations, notes, and vouchers. The court may dispense temporarily or permanently with the full or partial preliminary audit by the administrative authorities; or, if it sees fit, it may order it to be curtailed.

The Rechnungshof may omit unimportant accounts from the regular individual yearly examination, and either accept the report of the administrative authorities upon these accounts, or establish a simplified or curtailed examination for them. The Rechnungshof may at any time call in the accounts audited by the administrative authorities, examine the annotations and vouchers that have been prepared up to that time, and amplify and alter the annotations, as well as reserve opinion upon them. The administrative authorities, in connection with the accounts audited by them, must send the court of audit such vouchers, and report to it such departures from the law, or errors, as the court is bound to notice.<sup>67</sup>

The audit of accounts by the Rechnungshof extends to the following matters: <sup>68</sup>

- Whether the budget, including the supporting material which accompanies it, has been observed;
- Whether the individual accounts are truly and carefully based and supported according to law;
- Whether in regard to the securing and receiving of income, the expenditure and outlay of the money of the nation, also the acquisition, use, and alienation of national property, the administration has been carried on according to the existing laws and statutes, the standard principles of administration, and the necessary considerations of economy;
- Whether establishments were supported, offices maintained, or national moneys expended otherwise, which could have been curtailed or saved without injury to the work of the administration.

<sup>67</sup> RHO. Sections 92, 93.

<sup>68</sup> RHO. Section 96.

It can thus be seen that the examination of the accounts serves three kinds of control: legal, auditing, and administrative.<sup>69</sup>

The purpose of the legal control, also called the budget control, is to see that the budget has been carried out by the administrative branch of the government in accordance with the provisions of law. These include not only the provisions of the general budget law but also the provisions of the particular budget law of the fiscal year in question, such as all instructions, plans, and supporting statements. The Rechnungshof must also see that other laws affecting the budget, such as the salary law and the law of officers, have been complied with. It must inquire whether, for any deviation from the budget plans made by the administration in carrying out the budget, the consent of the Reichstag and the Reichsrat has been received.<sup>70</sup>

The purpose of the auditing control is to guarantee that the income accruing to the nation from taxes, tariffs, fees, contracts, and all other sources, has been received, and that the expenditures have been properly administered, "so that the nation receives all that belongs to it and properly fulfils all obligations incumbent upon it."<sup>71</sup>

Administrative control is one of the weightiest functions of the Rechnungshof, since it involves an examination of the departments not only according to the budgetary and auditing side, but also according to the economical fulfilment of functions. The Rechnungshof expresses itself upon this and all other matters entrusted to it, not only to the higher and intermediate national authorities who assist in the execution of the national budget, but to any state and municipal authorities who perform similar functions. These officers must accept the advice of the Rechnungshof in such matters.<sup>72</sup>

<sup>69</sup> Dr. Meissner makes a fourfold classification. He says: "The examination of the accounts by the Rechnungshof includes: first, if the budget has been observed; second, whether the individual accounting vouchers have been established and vouched for in an expert and competent manner; third, whether the income and the application of the national means has been carried out under the standard principles of administration and under the observation of the requirements of an economical administration; and, fourth, whether or not superfluous establishments and offices have been in existence."—*Das Staatsrecht des Reichs und seiner Länder*, pp. 199-200.

<sup>70</sup> Budget Law, Section 107.

<sup>71</sup> Schulze and Wagner, pp. 236-37.

<sup>72</sup> RHO. Section 102. See also Meissner, p. 199.

The control of the Rechnungshof in regard to economical management was greatly augmented in an indirect way, by a resolution of the Cabinet, dated November 27, 1922, which provided that the President of the Rechnungshof should act as an Economy Commissioner, with the function of examining the budgetary administration in each Ministry in respect to the decreasing and simplification of administration, especially the decreasing of personnel. Authority was bestowed on him to take all measures necessary for the fulfilling of these functions, and to report to the Cabinet the results of the examination together with his recommendations. He was given the right to participate in the sittings of the Cabinet with an advisory vote, and to make proposals. Largely as a result of his work, an ordinance of October 27, 1923,<sup>13</sup> ordered a very great decrease in the personnel in the national employ and a widespread simplification in national administration. The position of Economy Commissioner has been continued; it is still held by the President of the Rechnungshof, who also acts as the chairman of an administrative Economy Commission of three members.<sup>14</sup>

In order to carry out the functions prescribed for it, the Rechnungshof is given wide powers. It can demand information from the local organizations established for the administration of moneys and the keeping of books, as well as from the administration as a whole. It may also institute extraordinary audits of cash and balances. For the sake of auditing accounts and reports or in the interests of its supervision of economical management it may at any time call upon authorities for such information as it considers necessary, for the submission of books and papers, and for the display of documents, excepting those of the national Ministers. All decrees of the highest national authorities, through which a general provision is made in regard to the income or expenditure of the nation, or a provision already existing is altered or explained, or through which the income and expenditure of administrative establishments and undertakings in which the nation is concerned are created or altered, must be communicated to the Rechnungshof.

<sup>13</sup> RGBL. p. 999.

<sup>14</sup> For the personnel of this Commission and a summary of its duties, see *Handbuch für das deutsche Reich*, 1926, p. 244. See also *Reichsministerialblatt* of May 6, 1927, 55 Jahrgang No. 20; and Bilfinger, *Der Reichssparkommissar* (1928).

Before general service regulations are issued in regard to the keeping of books and the administration of moneys and stores, the opinion of the Rechnungshof is to be heard. It may at any time make criticisms which present themselves from its standpoint, in regard to the aforesaid ordinances and decrees.<sup>75</sup>

All resolutions of the Reichstag and the Reichsrat which concern accounting are to be brought to the knowledge of the Rechnungshof. The same holds for agreements made between the national Minister of Finance and the other national ministers concerning the management of budgetary appropriations, insofar as they are of significance in regard to the audit, as well as for the general directions which the national Ministers issue concerning the management of funds.

Upon the request of the national Ministry or of the Reichstag, the Rechnungshof must express its opinion on questions the answers to which are of importance for the management of budgetary appropriations by the authorities. In this manner the authorities are enabled to proceed without injury to themselves in doubtful cases and to guard themselves from later conflicts with the court. This right is comparable with the right of the disbursing officers of the federal government of the United States to secure the advice of the General Accounting Office before making doubtful payments. The advice given to the Reichstag is not necessarily limited to budget provisions, but may extend to questions of fact or of economic relationships.<sup>76</sup>

The higher national authorities and those under them who are entrusted with the carrying out of the budget, are subordinate to the Rechnungshof in all matters assigned to it by the budget law. It may enforce obedience to its orders by suits in accordance with the national civil service law. Upon its request, the penalties are enforced by the national Minister concerned. State and local authorities must obey its orders in respect to the national budget law, under like sanctions.

The Rechnungshof communicates to administrative authorities for reply and explanation, memoranda of objections raised in the audit. If shortages appear which are not cleared up by the reply, the court takes necessary steps to recover.<sup>77</sup>

<sup>75</sup> RHO. Sections 97-100.

<sup>76</sup> RHO. Sections 100, 101; Schulze and Wagner, p. 245.

<sup>77</sup> RHO. Sections 102-04.



After the audit of accounts sent in for the fiscal year, the Rechnungshof makes a report on its own responsibility, which covers the following questions:

Whether the amounts fixed in the budget accounts of income and expenditure check up with the corresponding sums reported in the depository accounts of income and expenditure, and whether they are properly verified;

Whether, and what, departures from the budget and its supporting documents appear; and in what cases offenses have been committed against laws, ordinances, and other regulations;

To what expenditures beyond and outside the appropriation there has been no legislative sanction.

The court of audit sends its report to the national Minister of Finance, who lays it before the Reichsrat and the Reichstag with the motion to discharge the administration in regard to the national budget accounts. Unless otherwise provided, the discharge does not include the matters and sums in regard to which the court made reservations.<sup>78</sup>

What follows in case the legislative authority refuses to discharge the administration in whole or in part for certain expenditures? The Constitution and the budget law make no special provisions for this contingency; hence it must be assumed that the ordinary methods of control would be employed. These would be, according to the seriousness and the nature of the point at issue, a vote of lack of confidence, impeachment, and court procedure for recovery or penalty.

After the audit is completed, the Rechnungshof communicates to the national Cabinet the observations made by it in connection with the audit, as to defects in the administration (with proposals for their removal) as well as departures from the laws and ordinances. The Cabinet must vote upon the report and inform the Rechnungshof as to its decision.

Certain sections of the report, which are specified by the Rechnungshof, are also brought to the attention of the legislative bodies, together with the decisions made upon them by the Cabinet.<sup>79</sup>

Several articles of the budget law deal with the auditing of the accounts of corporations with a separate legal personality, in

<sup>78</sup> RHO. Sections 107-08.

<sup>79</sup> RHO. Section 109.



which the Reich is interested. The responsible national Minister audits the undertakings on the basis of documents accessible to him as such, and the report of the members of the board of control named by him. The Minister must take steps to remedy possible mistakes in respect to the financial management of the corporation. He then sends to the Rechnungshof the documents and reports, which it audits. The Rechnungshof may also have the books and papers of the corporation examined by commissioners whom it considers qualified.<sup>80</sup>

**Organization of the Rechnungshof.** The Court of Audit, or Rechnungshof,<sup>81</sup> is one of the most important authorities in the Reich, standing as it does in a position between the legislature and the administration. It is a collegial body independent from both the national administration and the President, and is, therefore, not subject to executive or administrative orders and instructions. It is subject only to law.

Although the Rechnungshof in its present form is a newly established agent of the Reich, yet since 1868 it has been customary to send the national budget for audit to the Prussian High Chamber of Accounts (Oberrechnungskammer), which was designated in its capacity of national auditor, as "Rechnungshof des Deutschen Reichs."<sup>82</sup>

The members of the present Rechnungshof are the president, his deputy (who may be chosen from among the directors), the directors and the councillors. The national President appoints all these officers, with the countersignature of the Minister of Finance. Newly entering members require the consent of the Reichsrat. The president of the court selects the other officers, insofar as the national President has not exercised the right of appointment. The president of the court may make nominations to the appointing authority in respect to all positions except his own.

No person can be elected as a member of the Rechnungshof unless he shall have completed his thirty-fifth year. As a rule the members must have the qualifications for the judicial office or for

<sup>80</sup> RHO. Sections 110-17.

<sup>81</sup> RHO. Sections 118-25.

<sup>82</sup> See Bundesgesetzblatt, 1868, p. 433; von Bieberstein, p. 731, note 4; Schulze and Wagner, p. 272 ff.

the higher administrative or higher technical service of the Reich or a state. At least one-third of them must have the qualifications for the judicial office.

The members of this court are independent and subject only to the law. They have practically the same privileges as judges of ordinary jurisdiction in respect to temporary or permanent removal from office, transference to another position, or retirement and discipline.<sup>83</sup>

No members of the Rechnungshof may belong to the Reichstag, nor may any member participate in the examination of departmental affairs if the Minister or secretary of state concerned is closely connected with him by blood or marriage. If a member is related to another national or state officer in the same way, he may not participate in any affair which concerns that officer.

The court regulates the routine of its business by means of business ordinances, which are to be communicated to the Reichsrat and the Reichstag.

In cases prescribed by law, the court decides by a majority vote as to all matters of fundamental or very great importance, as well as matters brought to it by a member for decision. In case of a tie, the chairman casts the deciding vote. At least one-half of the members of the court must participate in every such decision. In matters which concern only one department of administration, when the question at issue is not of general importance, the decision may be made through chambers known as senates, instead of the entire assembly.

The senates must consist of at least three members. As a rule their decisions are valid for the court as a whole. Both before and after a senate makes a decision, however, any member may call for a vote of the full assembly.

The law itself outlines certain special matters that are considered of fundamental importance. These are: (1) Notations upon the results of the annual audit; (2) communications to the national administration of observations made by it in connection with the audit, as to defects, and proposals concerning their removal, as well as departures from laws and ordinances; (3) the issuing of

<sup>83</sup> See Constitution, Article 104, for the constitutional position of judges; the Law on the Organization of the Courts of January 27, 1877, for the position of judges in respect to discipline.

new general rules and ordinances, and the alteration of those in effect; (4) the bestowal of full powers upon commissioners or representatives; (5) and the institution of certain law suits.<sup>84</sup>

**National Debt Administration.** A special administrative agency,<sup>85</sup> called the "debt administration," has charge of issuing bonds, treasury notes, and like certificates of indebtedness on the part of the Reich. It must also care for the payment of the interest and principal of such debts. The Minister of Finance, subject to legal provisions, decides when, in what amounts and under what conditions bonds or treasury notes are to be issued, bills of exchange are to be given, or loans against securities are to be made. It is the technical, rather than the political or expedient aspects of these functions, that are cared for by the debt administration. Such points as the validation of certificates, their reindorsement when transferred, and recompense for certificates which have been lost or destroyed, are handled by this agency.

The debt administration is a collegiate body, consisting of a president, his deputy, and at least three members formerly in the higher ranks of the civil service. Permanent assistants may be appointed; and if necessary, non-permanent assistants also. The national President, acting with the consent of the Reichsrat and with the countersignature of the Minister of Finance, appoints the members of the debt administration. The president of the debt administration nominates the permanent assistants, who are appointed by the national President, with the countersignature of the Minister of Finance. All these appointments are for life.

The national debt administration is subordinate to the general direction of the Minister of Finance, yet it is an independent national authority, separate from the general financial administration. In its independent capacity it fulfils such functions as have been mentioned above, keeps the books dealing with national debts, issues and manages certificates of indebtedness, and cares for the custody, redemption, and cancellation of such certificates when called in, redeemed, or converted into book obligations.

A national debt committee, consisting of six members of the Reichsrat, six members of the Reichstag, and the president of the

<sup>84</sup> RHO. Article 126.

<sup>85</sup> See the national debt ordinance of February 13, 1924.

Rechnungshof, supervises the conduct of the affairs which are entrusted to the national debt administration. The debt administration sends to the debt committee the monthly and yearly balance sheets of its funds, as well as its business reports. The committee may require information concerning the administration, the status, and the interest and capital payments of the national debt, and may make criticisms on these matters. At least once a year it is to make an unexpected examination of the condition of the moneys and securities managed by the debt administration. After the Rechnungshof examines the accounts of the debt administration, it submits them to the committee.

The national debt committee reports annually to the Reichsrat and the Reichstag concerning both its own activities and the administration of the national debt during the past year.

It is hardly necessary to dwell upon the value of this agency. The selection of its members, their qualifications, their life tenure, and the control provided, make for an incorruptible and efficient administration of public debt; their independence and the technical nature of their work prevent any confusion of their duties with questions of policy or political expediency. An honest, competent, and expert technical management of the public debt seems almost inevitable under this organization.

**Summary and Conclusions.** Several features of the general budget system stand out in rather bold relief. Among these the most noteworthy are the following:

- The inclusiveness of the budget law;
- The location of responsibility and the methods of control exercised in the preparation and execution of the budget;
- The very great control exercised over the budget by the Reichstag;
- The fact that the Reichsrat has very little control over the budget;
- The integration of the accounting system with the budget system;
- and
- The nature of the control over administration exercised by the court of accounts.

Though, as we have seen, the Constitution contains only a few fundamental provisions governing budgetary procedure, the budget law establishes a complete system. It outlines each step in considerable detail, except for the action of the Reichstag and the Reichs-

rat, which is governed either by their own rules of order or by other constitutional and legislative provisions. The budgetary system is, therefore, a unified whole built up by a legislative act, instead of the more or less haphazard result of an aggregation of laws, ordinances, and practices. It is true that most of the provisions of the present law existed already in the laws of either Reich or state, yet the system as it now stands is a new integration, governing the preparation and execution of the budget, treasury management, bookkeeping and internal audit, and the independent control and audit of all national accounts.

The Cabinet as a whole is responsible for the budget estimates and the budget bill as presented to the legislature, in voting to approve it and in making decisions as to certain great lines of policy; but a particular responsibility attaches to the Minister of Finance. In order that he may be able to meet this responsibility he is given very considerable powers of control over both the preparation and the execution of the budget.

Thus, the Minister of Finance on his own responsibility approves the plans of the individual offices and ministries. In so doing he may alter or strike out requests of which he does not approve; and the reinstatement of any item requires Cabinet action, which is only taken when the Minister affected demands it and the question is of great or fundamental importance. Even if the Cabinet decides to include an item in the budget against the opinion of the Minister of Finance, the latter may veto the decision; and the item can only be placed in the budget if in a further vote a majority of the entire Cabinet vote for it, and the Chancellor votes with the majority. While the two Cabinet decrees referred to earlier in this chapter are intended primarily to give the Minister of Finance control over the execution of the budget, they also increase his power over estimates and planning, since they provide that he may limit or abolish organizations and authorities (subject to the Cabinet action just described) if in his judgment such changes are necessary for the maintenance of a sound financial situation.

It should be remarked that the control of the Cabinet and the Minister of Finance is not found in the estimates alone, but also in the limitations placed upon the expenditure of money, which accompany the detailed estimates. Thus, a real and quite far-reaching supervisory control is exercised over administration by means of the budget.

Many provisions of the budget law, as well as of other laws and ordinances, bestow upon the Minister of Finance certain controls in regard to the execution of the budget. His powers of making rules or establishing principles to this end, of giving consent to overdrafts, property transfers, and other exceptional acts, of passing upon changes in contracts, and the like, are very extensive; so much so that the claim has been made that the budget law violates the Constitution by giving this particular Minister a position of superiority instead of equality in relation to the other members of the Cabinet.

This concentration of power over budgetary planning and execution in the hands of the Minister of Finance has several results. First, it tends to allocate and unify responsibility for the planning of the budget, and thereby to prevent much overlapping, duplication, and "padding" of estimates. Second, it prevents a good deal of "log rolling" between ministries, since agreements concerning mutual aid are worthless except in the most unlikely contingency that the Chancellor should vote repeatedly against the Minister of Finance. Third, the budget is a unified document rather than a mere compilation of departmental estimates and requests. Finally, an effective centralized control over the financial side of administration is provided.

Great as are the powers of the Minister of Finance, however, they are not unlimited. Consistently with the principle, so well established in German public institutions, that authority should never be irresponsible, two controls are provided to prevent the Minister of Finance from exercising his great powers in a purely personal or arbitrary way. The first, already noted, is the ability of the majority of the Ministers and the Chancellor together to overrule his decisions; the second is his responsibility to the legislature, which is due not only to the fact that he may be retired from office, but also to the possibility that the budget committee of the Reichstag may greatly alter his estimates, and that the house itself may make changes in them.

The action of the Reichstag upon the budget bill is one of the most striking features of the German system. We have seen that the budget committee of the Reichstag goes into the details of the budget in every way, inserting new limitations and controls not provided for in the original draft; and that to a very great extent

the decisions of the committee regarding these matters are accepted by the Minister of Finance and the Cabinet. Ordinarily such changes are not considered as evidence of lack of confidence, necessitating resignation. An explanation must be sought for a state of affairs so different from the customary relation of a cabinet to parliament. This undoubtedly is to be found in the party situation. As no single party has a majority in the Reichstag, there can be no such thing as a "government party" which forms the Cabinet. Since the Cabinet itself is necessarily composed of men from the various factions, and not supported by a unified majority party, it cannot force its plans upon the legislature through party leadership. Although the Minister of Finance is extremely powerful within the Cabinet, he suffers from the lack of unified party support quite as much as do his colleagues. Even though he may be able to impress his convictions upon the Cabinet, he has no control over the legislature except the backing of his own party, the results of his personal ability to convince and persuade, and the dubious possibilities of the political situation.

It is difficult to determine to what extent legislative interference in the budget plans of the Cabinet impairs sound administration or to what extent it acts as a salutary control over administration for which no party is responsible. The petty quibbling in the legislature over minor items (such as voting that on a certain date one officer shall be eliminated out of a staff of twenty-five or thirty) which occurs frequently in respect to an ordinary budget measure, might theoretically lead to greater economy. It might, however, lead to the practice which is almost universal in our states, of "padding" practically every item in anticipation of the "economies and retrenchments" which will doubtless be effected by the legislature. When such padding takes place, the budget is no longer a rock bottom, responsible document, but becomes a foot ball to be kicked back and forth between the administration and the legislature. There seems to be no sound reason why the parties which agree upon a coalition cannot agree to support the Cabinet in its budget plans, and thus give it the position which it should have in regard to financial policy, if it is to be truly responsible. Experience has proved that division of financial responsibility not only weakens the prestige of a Cabinet, but also makes it impossible to allocate blame for inadequate or unsuitable plans or inefficient administration.

The custom of adding to the budget bill legislative suggestions to the Cabinet, and other limitations and controls, is also of questionable value. Budget theory and practice indicate that the Cabinet should place in the budget all the limitations and controls which are to be established. The concept of a responsible government implies that the Cabinet should do all things necessary for a sound and effective administration, subject to legislative sanction and confidence; and should be held responsible for its actions. It is extremely doubtful whether the best administration can be obtained, when the legislature enters into the details of administration rather than confining itself merely to the control over its chief agents.

There are, however, certain factors in the German system which may mitigate to a considerable extent the undesirable results of legislative interference with the budget plan. The most important of these is the fact that the Cabinet or its members may not only be required to appear before the legislature and the budget committee, but also have the right to appear and to be heard, even contrary to the orders of the day. This gives them an opportunity to express themselves in a timely and forcible way, on occasions when important decisions are to be made. If they are persons of ability and influence their opinions will have great weight.

The second factor is the appointment of budget commissioners by the Cabinet, to participate in the discussions on the budget in both the committee on the budget and the legislature. These persons are usually highly trained permanent officers who possess a thorough knowledge of their departments. They are thus able to furnish detailed information; and they may also be of great assistance because of presenting in an authoritative way the viewpoints of the particular departments which they represent.

Finally, it must be remembered that in practice as established since the new Constitution came into effect, the legislature is likely to confine its changes in the main to economy in personnel, and the provision of means for various kinds of endeavor toward social welfare. The Cabinet's estimates are actually made the basis for the budget law; and not simply disregarded, as the official estimates too often are in this country, particularly in the states.

The action of the Reichsrat upon the budget is much less extensive and significant than that of the Reichstag. Although the Reichsrat's consent is required to the introduction of the budget



into the latter body, on several occasions<sup>86</sup> when this consent has been withheld the Cabinet has made use of its right to introduce the bill accompanied by a statement of the position taken by the Reichsrat. If, after the Reichstag has passed the budget bill, the Reichsrat refuses its consent to the raising of items or the insertion of new items, the Reichstag may allow the objection to stand, or may overrule it by a two-thirds majority. So far, at least, the changes actually effected by action of the Reichsrat have been neither numerous nor important.

The practice of establishing preliminary and supplementary budgets must be condemned in principle, as it destroys the central purpose of the annual budget, which is to present a complete financial plan that can be considered and judged as a whole. The economic stress through which Germany has passed, however, the unprecedented fluctuations in prices, and the startling changes in the value of money, have made these exceptional partial budgets an unavoidable necessity. With the restoration of a sound financial and economic status they are tending to pass from the scene; and there is little doubt that under normal conditions Germany will be able to plan and operate an annual budget.

Of more than passing interest is the fact that in Germany the accounting system of the national departments and enterprises (with certain special exceptions) is integrated with the budget classifications. Such an integration facilitates the preparation of budget estimates and obviates the very real difficulties which arise when the accounts of a department are not kept according to the classification used in the budget. Accounting and auditing can be done much more easily where accounts are kept which correspond in detail with the appropriation items as granted by the legislature. A unified accounting system is thus established in all the different departments and agencies of government. If the accounts are kept exactly in accordance with the budget estimate classification, the administrator himself can learn with the greatest ease whether he is observing all the limitations placed in the budget in regard to detailed items of revenue or expenditure. An integration of the accounting system with the budget system of any government is one of the first steps to be taken in order to secure saving of time,

<sup>86</sup> Verhandlungen des Reichstags, Anlagen, I Wahlperiode, 1920, No. 5468; III Wahlperiode, No. 6.

knowledge of actual financial conditions, and proper auditing and accounting. Germany is to be congratulated upon having taken this important step in the direction of financial efficiency.

In respect to the Rechnungshof, the first fact which should be particularly emphasized is the position of the court. It is not an agent of the legislature, as are the Comptroller General of the United States and the Comptroller and Auditor General in Great Britain; hence it is not controlled by parliamentary responsibility. On the other hand, it is not an agent of the administration; hence it is perfectly free to criticize the conduct of the Ministers in respect to matters falling within its sphere, and to curb abuses or mistakes. It is subject only to the law. Its independence is further secured by the fact that the members are selected by the national President, with the countersignature of the Minister of Finance, and with the consent of the Reichsrat, instead of being chosen by either the Reichstag or the Cabinet. Finally, its members are appointed for life, and may not be removed from office, transferred, or retired, except by virtue of a judicial decision, and on the grounds and in the forms prescribed by law.

The organization of the court is of interest. It is not, like the auditing agency in the United States and in Great Britain, a one-man authority, but a council or "college." Several distinct advantages arise from such an organization. It is possible to distribute the minor business of the court among the subdivisions or "senates," thus effecting a considerable saving of time. Important questions can be settled by the court as a whole, thus insuring a wide view of the problem, impartiality, and a more carefully reasoned decision than might be possible if one person alone were to make it. Consequently, a feeling of confidence and respect for its decisions is developed. The placing of responsibility for the administration of the court in the hands of its president means that routine matters are carried on in an efficient and business like manner, which is not usually the case unless some one within a collegiate authority is made responsible for its administration.

The requirements laid down by law for membership in the court are such as to insure that the members have both educational and practical qualifications for office.

The Rechnungshof is not merely an auditing authority, but a controlling authority in the broadest sense of the word; since its

duty is so supervise the entire administration of the budget. As an auditing authority, it audits not only the budgetary accounts but also the accounts of all enterprises in which the Reich is a shareholder. Its authority in respect to the budget includes the further right to determine whether the administration has been carried out according to the standard principles, with due regard for economy. It notifies the Cabinet of any defects in administration which have come to its attention, and makes proposals for their removal. The administration, after voting on the proposals made by the court, informs the latter of its decisions.

In addition to its function of making investigations and recommendations, the court possesses real powers of control. It may enforce obedience to its orders by suits, may punish failure to carry out its orders, and may impose penalties. It thus tends to become a superior agent not only for keeping financial administration within legal bounds, but also for seeing that the government is efficiently managed.

Vast as are the powers of the court, it is not allowed to act in an arbitrary manner. The law provides for administrative replies and explanations to its memoranda of objections; and also stipulates that very minor mistakes and errors may be brought to the attention of the administrative authority or of the person who prepared the accounts, without any demand for a reply.

It is interesting to note that the Rechnungshof does not deal directly with the legislature, but sends in its report through the national Minister of Finance, who lays it before the Reichstag and the Reichsrat, together with the motion to discharge the administration in regard to the national budgetary accounts.

The courts of accounts, then, is an expert collegial body, under neither administrative nor legislative control, but subordinate only to law. It carries on the auditing function and also acts as a critical examining body over the financial aspects of administration.

The national debt administration, acting under the supervision of the national debt committee, provides an expert management of the technical side of the obligations of the Reich.

In completing this survey of the German system, only favorable criticisms can be offered as to the business and managerial aspects of the budget situation. The preparation, execution, accounting, reporting, and general control of the budget are so interrelated as

to bring about an effective unitary system. Less can be said, however, in favor of the political aspects. Although the dangerous practice of passing preliminary and supplementary budgets may be regarded as an emergency measure, which the sound business sense of Germany will not permit under normal conditions, the habit of legislative interference with Cabinet plans shows no signs of disappearing. Whether it can be done away with until the party situation changes materially, is a question to which no *a priori* answer can be given. What political and economic effects it will have, if continued, cannot be prophesied. The answers to these questions depend upon future experience.

## CHAPTER IX

### STATE GOVERNMENT AND ADMINISTRATION

Germany, at present, is composed of eighteen states<sup>1</sup> which vary greatly in territorial extent and population, from Prussia with its 112,625 square miles and 38,000,000 population, to Lübeck with 115 square miles and 120,000 citizens, Hamburg with 160 square miles and 1,152,000 inhabitants, and Waldeck with 433 square miles and 57,000 population.<sup>2</sup> Anhalt, Brunswick, Lippe, and Waldeck are entirely surrounded by Prussia, as are portions of the territory of several other states. Waldeck, indeed, has agreed to become a part of Prussia in 1929.<sup>3</sup> Oldenburg is composed of three different parts widely separated from one another; Brunswick, Hamburg, and Anhalt are composed of scattered bits of territory; Hesse is divided into two separate parts; and East Prussia is separated from the remainder of Prussia by a part of Poland.<sup>4</sup> These differences in size and population, as well as the lack of territorial integration, cannot fail to have some effect upon state politics and administration. The existence of the illogical "enclaves" and territorial dispersements can only be deplored from the standpoint of administration. However, the changes in state boundaries which have already taken place give cause for hope of satisfactory adjustments in the future.

Since the World War, all the states except Waldeck have adopted new constitutions.<sup>5</sup> As a rule these are very brief, covering but

<sup>1</sup> Anhalt, Baden, Bavaria, Brunswick, Bremen, Hamburg, Hesse, Lippe, Lübeck, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, Prussia, Saxony, Schaumburg-Lippe, Thuringia, Waldeck and Württemberg.

<sup>2</sup> The population figures are rounded to the nearest thousand. Information from *Statesman's Yearbook*, 1927, pp. 959, 987, 962.

<sup>3</sup> It has not adopted a special constitution for this reason, but has made changes in its old constitution to conform with the requirements of the national Constitution. For discussion, see *Jahrbuch des öff. Rechts*, 1921, p. 409, and *Archiv d. öff. Rechts*, N. F. 7, p. 201. The final arrangements for the union with Prussia are not completed at the time this is written.

<sup>4</sup> See Andress' *Handatlass*, 1924, p. 42.

<sup>5</sup> A list of these constitutions, with the date of their adoption, the place where they can be found, and the principal laws amending them, is given in the bibliography at the end of this book. The citations in parentheses in this chapter are to state constitutional provisions.

few pages. In nearly all cases they have special sections dealing with the form and powers of the state, the legislative authority and legislation, the administrative authority, the financial system, local self-government, religion and education. Bavaria (Sections 13-16), Brunswick (Articles 2-6), Oldenburg, Baden, and Mecklenburg-Schwerin (Sections 4-23), have special sections dealing with fundamental rights, despite the fact that such rights are guaranteed by the national Constitution and apply throughout the Reich.

**The Legal Basis for State Government.** The contents of the state constitutions are greatly influenced by the national Constitution. Article 17 of the latter contains several normative provisions for all state constitutions, which include the republican form of government, the foundations of a state election law, and a cabinet dependent upon the confidence of the representative body. The second main title of the national Constitution, which is named "Fundamental rights and duties of Germans," not only establishes personal rights, but also outlines basic policies in respect to the constitutions and the laws of the states. Far more than in the United States, the national Constitution controls the state constitutions. In several instances, also, the states have followed the example of the national Constitution even where there is no compulsion to do so. As a result of the national constitutional control over the form, organization, sphere of operations, etc., of state government, the state constitutions present similarities that could hardly have arisen otherwise.

The relation between the Reich and the states is such that not only state laws and ordinances, but national laws and ordinances, may have a controlling effect upon state government and administration. Other chapters of this book have shown that the judicial system (not including the administrative court system as yet) is regulated by the Reich; that the same thing is true of the financial system; and that standards and norms in many important fields are set for all the states by national legislative and administrative action.

**The State Legislative Authority.** In all the German states the legislature is organized as a unicameral body. Although the Staatsrat in Prussia bears certain resemblances to an upper legislative house, it is not so considered. Its members are not representatives

of the whole people but of the provinces. Although it has certain powers in respect to legislation, they are not in any way controlling.<sup>6</sup> At first glance, the Senate of Lübeck would appear to be an upper house, since Article 43 of the state constitution provides that "The Senate and the House of Burgesses act together in the exercise of the state power, in so far as it is not otherwise provided in this constitution." An examination of the Senate's functions, however, shows that it is predominantly an administrative body.

The legislative authority is called the Landtag in all the states, except in the Hanseatic cities of Hamburg and Lübeck, where it is called the Bürgerschaft, and Bremen, where the constitution mentions it by both names.

In accordance with Article 17 of the national Constitution, which all the states have followed in effect in their own constitutions, the legislative body in every state is composed of representatives of the people elected by universal, equal, direct, and secret suffrage, upon the principle of proportional representation. Both men and women have the right to vote.

The number of members in the legislative body varies greatly from state to state, ranging from fifteen in Schaumburg-Lippe to 160 in Hamburg. In Prussia the number is not fixed, but varies in proportion to population, one member being elected for every so many inhabitants.<sup>7</sup>

The term of the representatives is either three or four years. Anhalt, Brunswick, Bremen, Hamburg, Hesse, Lübeck, Mecklenburg-Schwerin, Oldenburg, Schaumburg-Lippe, Thüringia, and Württemberg have established a three-year term. The remaining states provide for a four-year term.

The Landtag is in general both a legislative body and a supervisory authority over administration. Some of the state constitutions expressly mention this double function. Thus, the Brunswick constitution provides that the Landtag shall "exercise the legislative power, oversee the administration, and appoint the state ministry" (Article 14). Article 46 of the Oldenburg constitution provides that the "Landtag has to watch over the execution of

<sup>6</sup> See Preuss, *Verfassung des Freistaats Preussen*, u. s. w., in *Jahrbuch des Oeffentlichen Rechts der Gegenwart*, 1921, pp. 269-70.

<sup>7</sup> Prussia, Constitution, Article 9; *Landeswahlgesetz* of October 28, 1924 (GS. 671); *Wahlordnung* of October 29, 1924 (GS. 684).

the laws." Article 5 of the constitution of Saxony says: "The Landtag makes the laws, elects the Minister-President, and watches over the polity and administration of the state."

Although the Landtag (the Bürgerschaft in Hamburg and Lübeck) is the chief legislative authority, it is not the exclusive authority in the creation of law. In practically all the states, the constitution provides that the proposal of laws belongs to the administration as well as to members of the legislature. Thus, Section 9 of the Anhalt constitution reads: "The right to propose laws belongs to the Landtag as well as to the State ministry." The Bremen constitution (Section 56) provides that legislative proposals can be introduced by the Senate or from the body of the Bürgerschaft. Article 50 of the Prussian constitution makes it a function of the state ministry to determine upon legislative proposals which are to be brought into the Landtag. Section 7 of the Württemberg constitution provides that the Landtag shall discuss and pass upon laws proposed by the state ministry or by its own members. The promulgation of laws by ministers is also a general principle,<sup>8</sup> as is the ministerial countersignature. All the state constitutions provide for participation by the people in the process of legislation through the initiative or the referendum, or both.<sup>9</sup> In Prussia the state council has the right of initiating laws and also the right of suspensive veto (Articles 40, 42).

Practically all the states<sup>10</sup> permit the ministry (in Hamburg a standing committee of the Bürgerschaft, upon the motion of the Senate) to pass either emergency laws or emergency ordinances having the force of law, if the need arises at a time when the

<sup>8</sup> For examples, see Hesse, Article 8; Mecklenburg-Schwerin, Section 44; Oldenburg, Section 42.

<sup>9</sup> Anhalt, Section 3; Baden, Sections 6, 21, 23, 24, 57, 69; Bavaria, Sections 7, 10, 45, 76, 77; Brunswick, Articles 23, 25, 41, 42, 43; Bremen, Sections 2, 3, 18, 19; Hamburg, Articles 54, 55, 58; Hesse, Articles 4, 12, 14, 24; Lippe, Articles 3, 4, 10, 11, 20; Lübeck, Articles 23, 69, 70; Mecklenburg-Schwerin, Section 45; Mecklenburg-Strelitz, Sections 22, 32, 33; Oldenburg, Sections 65, 66, 67, 68; Prussia, Articles, 3, 6, 14, 57; Saxony, Articles 3, 9, 27, 36, 37, 38; Schaumburg-Lippe, Sections 3, 4, 10, 11, 32; Thuringia, Sections 8, 24, 25, 26, 27, 28; Württemberg, Sections 16, 41, 44.

<sup>10</sup> Anhalt, Section 44; Baden, Section 56; Bavaria, Section 61, No. 7; Brunswick, Article 40; Hamburg, Section 31, No. 3; Hesse, Article 9; Mecklenburg-Schwerin, Section 61; Mecklenburg-Strelitz, Section 35; Oldenburg, Section 37; Prussia, Article 55; Saxony, Article 40; Schaumburg-Lippe, Section 46; Thuringia, Section 33; Württemberg, Section 46.



legislature is not convened. In some cases these must remain within the boundaries of the state constitution; in others, even constitutional rights may be suspended temporarily. The constitution of Mecklenburg-Schwerin (Section 61) permits the ministry to arrange for the non-application of provisions of the state law already in force at the time when the constitution went into effect, in individual cases of a special nature. In Brunswick and Saxony not only the state constitution, but also the election law, is placed beyond the reach of the emergency power. The consent of a standing committee of the Landtag is required to all emergency ordinances in Brunswick, Prussia, Mecklenburg-Strelitz, and Schaumburg-Lippe. Saxony requires a previous hearing of the interim committee, "if possible." Most of the constitutions provide that emergency laws or emergency ordinances having the force of law must be brought to the attention of the Landtag as soon as it assembles, for its consent. In case consent is refused, the law or ordinance is void or must be revoked by the ministry.

**The Landtag as an Organ of Administration and Control.** The state legislative authorities in Germany are granted several distinct methods of exercising supervision and control over the administration.

As we shall see later, they participate either directly or indirectly in the selection of the administrative authority. This gives them the opportunity of selecting persons who are in accord with their general lines of policy, and in whom they have confidence.

Like the national Constitution, the state constitutions provide, as a rule, that not only the entire ministry but individual members of the ministry as well must possess the confidence of the legislative body for the administration of their departments, and must retire when this confidence is withdrawn. In most states a vote of lack of confidence must be definitely proposed in writing and signed by a certain proportion of the membership of the legislature, usually one-third or one-fourth. As a rule the proposal must be placed on the calendar several days before the vote is to be taken, and must be voted upon favorably by at least a legislative majority. In Bavaria, for instance, the proposal must be signed by thirty members of the Landtag. It must be communicated to the minister-president in writing and must be brought up for discussion within five days. The ministers must appear personally during the discus-

sion of the proposals of lack of confidence brought against them, unless they have already resigned. If they do not appear, however, the matter can be discussed and decided in their absence. The decision is valid when at least a majority of the legal membership consents (Section 55). An interesting feature of the Bavarian Constitution is that the state secretaries must also have the confidence of the Landtag, "in so far as they act independently in representing the ministers" (Section 59).

The Prussian constitution provides (Article 57): "The Landtag can withdraw its confidence from the state ministry or an individual minister by express resolution. The resolution is not permissible when a valid proposal to dissolve the Landtag has been properly initiated. The proposal for the bringing in of such a resolution must be countersigned by at least thirty representatives. . . . The resolution for the withdrawal of confidence is only operative when at least one-half of the representatives vote therefor."

The constitution of Hamburg provides that if confidence is withdrawn from the entire Senate, or if the Senate stands firm in favor of an individual member from whom confidence is withdrawn, the Senate may call a popular referendum, to decide whether it is to retire or whether there shall be a new election to the House of Burgesses (Articles 36, 37). In Lübeck, under the same circumstances, the Senate has the right to give notice to the House of Burgesses that it will order a referendum as to whether it (the Senate) shall retire. In case the people vote against the retirement of the Senate, there must be a new election to the House of Burgesses (Article 14). In Thüringia (Article 41) and Schaumburg-Lippe (Articles 30, 38), any members of the ministry who have the status of civil servants are placed on the waiting list in case of a vote of lack of confidence against the whole ministry or against such members individually. In Saxony (Article 27) and Anhalt (Section 11) if the ministry has decided upon a popular referendum and has communicated this resolution to the Landtag, the Landtag cannot demand the withdrawal of the entire ministry or of an individual minister, until the vote on the referendum has been taken. Section 53 of the constitution of Bremen provides that under similar conditions a vote of lack of confidence may not be passed on the same question, and that an outcome of the referendum favorable to the Senate precludes a withdrawal of confidence on

the question concerned, until a new legislature has been elected. A further provision of the same section is, that if the entire Senate retires because it is unwilling to take responsibility for some policy or action desired by the *Bürgerschaft*, although there has been no express vote of lack of confidence, one-third of the members of the *Bürgerschaft* can demand a popular referendum as to whether the Senate shall retire or there shall be a new election of the *Bürgerschaft*. In Oldenburg, in case the Landtag withdraws its confidence from the entire ministry, it may either retire or dissolve the Landtag. If it chooses the latter alternative, a new election must be held immediately. In case the newly elected Landtag denies its confidence to the ministry in respect to the same affair for which the old Landtag was dissolved, the ministry must retire, with no further right to dissolve the Landtag (Section 40).

In Prussia, the minister president has to retire after a vote of lack of confidence, only when he has not made use of his function of proposing the dissolution of the Landtag, or when his proposal to this effect has been rejected by the committee which must pass upon it (Article 57).<sup>11</sup> In Saxony, if the Minister President retires, a new cabinet must be formed (Article 27). The Württemberg constitution says very little regarding ministerial confidence, merely providing that the state ministry, which is selected by the state president, must have the confidence of the Landtag (Section 27).<sup>12</sup>

Another way in which the legislative authorities of the German states control the administrative authorities is by the establishment of investigating committees.<sup>13</sup> All the state constitutions, except

<sup>11</sup> This committee is composed of the minister-president, the president of the Landtag, and the president of the state council.—Article 14 (1).

<sup>12</sup> The following constitutional provisions govern cabinet responsibility in the German states: Anhalt, Section 37; Baden, Sections 53, 59; Bavaria, Sections 55, 59; Brunswick, Article 33; Bremen, Section 53; Hamburg, Article 36; Hesse, Article 38; Lippe, Article 35; Lübeck, Article 14; Mecklenburg-Schwerin, Article 53; Mecklenburg-Strelitz, Sections 22, 25; Oldenburg, Section 40; Prussia, Article 57; Saxony, Article 27; Schaumburg-Lippe, Section 38; Thuringia, Sections 39, 40; Württemberg, Section 27.

<sup>13</sup> The following constitutional provisions govern the establishment of these committees: Anhalt, Section 8; Baden, Section 38; Bavaria, Section 52; Brunswick, Article 29; Hamburg, Article 26; Hesse, Article 36 a; Lippe, Article 9; Mecklenburg-Schwerin, Article 50; Mecklenburg-Strelitz, Section 19; Oldenburg, Section 46; Prussia, Article 25; Saxony, Article 21; Schaumburg-Lippe, Section 9; Thuringia, Section 23; Württemberg, Section 8.

those of Bremen and Lübeck, provide for such committees. These committees might of course be established at any time by vote of a legislative majority, but most of the constitutions provide that they must be established upon the demand of a certain rather small number of members of the legislature; as, for example, in Anhalt, one-fourth of the members; in Bavaria, one-fifth; in Prussia, one-fifth; in Saxony, one-fifth; in Lippe, one-third. In this way a reasonably strong minority can at any time secure an investigation, thus giving the legislature much greater control over the administration than would be possible if a majority vote of the entire legislature were necessary. Investigating committees are generally endowed with considerable powers, such as the right to take testimony, to make use of the provisions of the code of criminal procedure in securing witnesses and evidence, to demand documents from members of the ministry and other authorities, and to secure the assistance of courts and administrative authorities.

For the protection of the rights of the legislature against the administration in the intervals between legislative sessions or electoral periods, several states provide for interim committees.<sup>14</sup> In Prussia and Brunswick this committee has the rights of a committee of investigation; in Saxony it is to be heard before the administration issues emergency ordinances, and it may also impeach members of the government.

Lübeck has developed a very interesting method of dealing with differences of opinion between the legislature and the ministry in respect to a law. A "Confidence Committee" (*Vertrauensausschuss*) is created of seven members each, from the Senate and the *Bürgerschaft*. This joint committee must settle the difference between the two branches of government by a decree which is published. Either the Senate or the *Bürgerschaft* within fourteen days has the right to ask for a referendum regarding the decree (Articles 62, 69).

The majority of the states in Germany provide for the possibility of impeaching their ministers.<sup>15</sup> As a rule the motion for impeach-

<sup>14</sup> Brunswick, Article 30; Lippe, Article 24; Mecklenburg-Strelitz, Section 20; Prussia, Article 26; Saxony, Article 23; Schaumburg-Lippe, Section 18.

<sup>15</sup> Anhalt, Article 39; Baden, Sections 60, 61; Bavaria, Sections 56, 70; Hamburg, Article 49; Hesse, Articles 47-52; Lippe, Article 37; Mecklenburg-Schwerin, Sections 62, 66; Oldenburg, Sections 69-75; Prussia, Article 58; Schaumburg-Lippe, Article 41; Thüringia, Sections 48-51; Württemberg, Sections 38, 56-58.

ment can only be brought on account of violation of the constitution or laws. In a few states it is permitted on other grounds ; in Baden, for example, on the ground that the actions of the ministry or ministers are endangering the safety and welfare of the state. Ordinarily the proposal for bringing in an impeachment must be signed by from one-third to one-half of the members of the Landtag ; and the final decision must be made by more than a majority vote, usually either two-thirds, or the majority required for the amending of the constitution.

The trial in impeachment cases is never held by the legislature itself, but by a court of state which is generally composed in part of judicial members and in part of associates selected by the legislature, frequently from its own members. Lippe and Schaumberg-Lippe provide that the Staatsgerichtshof of the German Reich shall decide their impeachment cases.<sup>18</sup>

Because of the rather large number required to bring a motion for impeachment before the legislature, and the extraordinary majority required for its adoption, there is little danger that a mere partisan effort to impeach a ministry can succeed. The fact that impeachment does not in any way involve questions of policy or methods of carrying on administration, but is based in general only upon charges of violation of the constitution or laws, makes the matter justiciable and a proper case for trial before an authority judicial in nature and composed in part of judges. According to the German theory, all questions of policy or administration are properly to be brought before the legislative authority, which is primarily an authority charged with the determination of public policy and with the supervision of administration. Questions of law, however, are to be decided by a judicial authority. The legislature merely brings the charges against the administration, and in so doing it is not acting in a judicial capacity but in a supervisory capacity.

From this very brief survey of the functions exercised by the state legislature as an organ of administration and control, it can readily be seen that it exercises a profound influence upon adminis-

<sup>18</sup> Article 19 of the national Constitution provides that the Staatsgerichtshof of the German Reich shall decide "constitutional controversies within a state," when no other state or national court has jurisdiction.

tration through the power of appointment, through parliamentary control, through its extensive powers of investigation (which may be initiated by a relatively small number of representatives), and through the possibility of impeachment.

**Central Administration.** State administration in Germany is regulated by the national and state constitutions, national laws and ordinances, and state laws and ordinances supplementing the national ones, in so far as the state is acting for the Reich; and by state constitutional provisions, state laws and ordinances in so far as the state is carrying out its own functions. The central state administration is at the same time an agent for the Reich and an agent of the state.

In all the states of Germany except Waldeck, whose administration is carried out by Prussia, the chief administrative authority is a collegial body which is usually called the state ministry. In the Hanseatic cities of Hamburg (Article 32), Lübeck (Articles 2, 5 ff.), and Bremen (Section 35), however, it is known as the Senate, in Hesse (Article 37) it is called the entire ministry, in Lippe (Article 25), the state presidency, and in Schaumburg-Lippe (Section 28 ff.) it is known as the state administration.

The constitutions rarely fix a definite number composing the ministry, but generally leave the matter to be determined by law and ordinance. The number of members varies greatly in the different states. Some of the small states, such as Brunswick and Lippe, have only three ministers, while the larger states, such as Prussia and Bavaria, have seven or eight. The three Hanseatic cities of Hamburg, Lübeck, and Bremen have fifteen, twelve, and fourteen, respectively. The large number in these city states is accounted for by the fact that the Senate is at the same time the administrative body for the state and for the city, and as such has a variety of functions to carry on. In Prussia the ministry consists of the minister-president and the ministers of public welfare, justice, commerce, the interior, finance, education, and agriculture. In Bavaria the ministry consists of the minister-president and the ministers of foreign affairs, education, commerce, industry, social welfare, agriculture, interior, finance, and justice. As in the Reich, so in the states, the cabinet may be composed of members

of several political parties, for the same reasons given previously for the national Ministry.<sup>19</sup>

Members of the state ministries, like those of the national Cabinet, act usually in a twofold capacity. Collectively, as a collegial authority, they have charge of the general state administration and policy; as individuals, they direct departments.

The typical state cabinet is composed of an official head and a varying number of ministers. The head of the cabinet is called the minister-president in Anhalt (Section 27), Bavaria (Section 58), Mecklenburg-Schwerin (Section 53), Oldenburg (Section 39), Prussia (Article 44), and Saxony (Article 25); the state president in Baden (Section 52), Hesse (Section 37), and Württemberg (Section 26); the president in Bremen (Section 45) and Hamburg (Article 41); and the chairman in Thuringia (Section 45). The other members are usually called ministers or state ministers; but other titles are sometimes employed, as senators in the Hanseatic cities, members of the state presidency in Lippe, and members of the state administration in Schaumburg-Lippe.

The members of the administration are chosen directly by the legislature in more than half of the states.<sup>20</sup> In Hesse (Article 37), Prussia (Article 45), Saxony (Article 26), and Württemberg (Section 27) the legislative authority selects the head of the cabinet, and he chooses the other members. Hesse requires ratification of his choices by the legislature. In Oldenburg the Landtag elects the minister-president and upon his proposal the other members (Section 40); in Bavaria (Section 58) the procedure is quite similar. In Mecklenburg-Strelitz the president of the legislature appoints the members of the state ministry (Section 24).

**The Functions of the State Ministry.** The state administrative authority is charged with a number of very important functions. Most of the constitutions bestow upon it the directing, executing, and supervising powers. These are quite frequently described in some detail, and the constitutional provisions are always supplemented by laws.

<sup>19</sup> For detailed information as to the number composing the ministries of the various states and their party affiliations, the current Statesman's Year-book should be consulted.

<sup>20</sup> Anhalt, Section 28; Baden, Section 52; Brunswick, Article 33; Bremen, Section 36; Hamburg, Article 34; Lippe, Article 26; Lübeck, Article 7; Mecklenburg-Schwerin, Section 53; Schaumburg-Lippe, Section 29; Thuringia, Section 35.

As a rule the ministry as a whole represents the state in respect to the Reich or other states.<sup>21</sup> In several states, however, this function is performed by the minister-president or the officer who corresponds to minister-president.<sup>22</sup>

It has been mentioned above that the state ministry in practically all cases has equal power with the legislative authority in the proposal of laws.<sup>23</sup> As a rule it is also charged with the issuing and execution of laws,<sup>24</sup> and in Oldenburg (Section 34) there must be agreement between the Landtag and the ministry before laws can be passed, repealed, amended, or finally interpreted. The right to issue emergency laws, or emergency ordinances having the force of law, has already been discussed. These various powers give to the cabinet a very considerable influence over legislation.

The ministry is the authority for the issuing of ordinances and various rules and regulations governing administration. As such it enjoys a large degree of power, for the Landtag, like the Reichstag, usually leaves the details of laws to the administration to fill in and supplement by ordinance. The authorization for the issuing of ordinances is given in general by the state constitutions<sup>25</sup> and in detail by special laws.

As a rule the organization of the administration in the states of Germany is left to the ministry. This function ordinarily in-

<sup>21</sup> Anhalt, Section 33; Baden, Section 56; Bavaria, Section 61, No. 3; Brunswick, Article 33; Bremen, Section 60; Hamburg, Article 45; Lippe, Article 29; Lübeck, Article 47; Mecklenburg-Strelitz, Section 29; Prussia, Article 49; Schaumburg-Lippe, Section 32; Thuringia merely provides that treaties of state shall be decided upon by the cabinet (Section 47, 1).

<sup>22</sup> Hesse, Article 41; Mecklenburg-Schwerin, Section 55; Saxony, Article 28; and Württemberg, Section 32. Oldenburg makes no provision on the subject, but it requires that all treaties of state be signed by the minister-president and at least one other minister (Section 42, par. 3).

<sup>23</sup> See Anhalt, Section 9; Bremen, Section 56; Hamburg, Article 51; Hesse, Article 43; Lippe, Article 10; Mecklenburg-Strelitz, Section 30; Oldenburg, Section 34; Prussia, Article 50; Saxony, Article 34; Schaumburg-Lippe, Section 10; Thuringia, Section 28; Württemberg, Sections 7 and 30.

<sup>24</sup> See, for example, Baden, Section 56; Bavaria, Section 62; Hamburg, Article 56; Lübeck, Article 47; Prussia, Article 60; Saxony, Article 39; Württemberg, Section 42.

<sup>25</sup> See, for example, Bavaria, Section 61; Brunswick, Article 32; Prussia, Article 51; Thuringia, Section 47, No. 3; Saxony, Article 32. In Saxony (Article 30) the individual ministries are given the power of issuing ordinances, subject to the right of the cabinet as a whole to take over matters of general political significance.



cludes the tasks of creating the particular ministries, dividing duties among them, establishing an order of business, etc.<sup>26</sup> However, certain exceptions to the general rule, and modifications of it, should be noted. In the constitution of Hesse (Article 45) it is provided that the competence of the entire ministry, the form of discussion and of making decisions, and the division of business among the individual ministers and other highest state authorities, are to be regulated by ordinances of the entire ministry, in so far as the constitution, the laws, or a vote of the Landtag may not provide otherwise. Mecklenburg-Schwerin (Section 54) provides that the state ministry shall be divided into ministerial departments, the number of which is to be determined by law, and the heads of which are to be members of the state ministry. The division of business among the different ministries, however, is determined upon by the state ministry. The Thüringian constitution provides that the state administration shall be divided into ministries, in which special divisions for important administrative affairs can be established. The number of such ministries is determined by law (Section 34). The constitution of Saxony provides that the names and the number of ministries shall be established by the budget law (Article 29).

The ministry is almost always given the right of appointing the other state officers;<sup>27</sup> often subject to certain modifications, such as a proviso that individual ministers shall appoint the officers in their own departments.

In several states the ministry selects the minister-president or the chairman, although the usual rule is election by the Landtag. Thus, in Hamburg, two members of the Senate are selected annually as president and deputy president, with the respective titles of first and second Bürgermeister (Section 41). In Lübeck the chairman of the Senate and his representative are elected by the Senate from among its members. The chairman bears the title of Bürger-

<sup>26</sup> Anhalt, Section 34; Bavaria, Section 58; Bremen, Sections 51 and 52; Hamburg, Article 38; Hesse, Article 45; Lübeck, Article 13; Mecklenburg-Strelitz, Section 28; Prussia, Article 47.

<sup>27</sup> Anhalt, Section 35; Baden, Section 58; Bavaria, Section 61; Brunswick, Article 35; Bremen, Section 60; Hamburg, Article 48; Lippe, Articles 30 and 41; Lübeck, Article 47; Mecklenburg-Schwerin, Section 60; Mecklenburg-Strelitz, Section 38; Prussia, Article 52, but see also Articles 20, 77, 80; Saxony, Article 31; Schaumberg-Lippe, Section 33; Thüringia, Section 47, No. 6; Württemberg, Section 39.

meister (Article 12). Very similar provisions are found in the constitution of Bremen (Section 45). In Thuringia the chairman and his deputy are chosen by the state cabinet from among its own members (Section 45).

In nearly all the states whose constitutions provide for popular initiative, referendum, or recall, the ministry acts to a certain extent as the agent of the people in connection with these institutions,<sup>28</sup> especially in presenting an initiated bill to the Landtag (which may pass it and thus save the cost and trouble of an election).

In the majority of the states, the ministry has the right under certain conditions to call a popular referendum upon laws passed by the legislature.<sup>29</sup> This referendum may be ordered in Anhalt and Hesse in connection with the ministerial assent to bills passed by the legislature. In Anhalt (Section 42), if a law has been passed to which the state ministry will not agree, it is referred back to the Landtag, which decides upon it the second time. In case it is repassed by a two-thirds majority, the ministry can make no further objection to it, but may order a popular referendum on the matter within two months.<sup>30</sup> In Hesse (Articles 8 and 13), laws must be signed by the state president and at least one-half of the other members. In case the ministry does not wish to publish a law, it can order a popular vote within two months. Bremen, Hamburg, Mecklenburg-Schwerin, and Saxony provide that a law to which the ministry objects may be sent back to the legislature for further consideration. In case the legislature still maintains its original position, the ministry may call for a popular referendum upon the law.<sup>31</sup> In several of the other states, the ministry can call for a referendum upon a law without first sending

<sup>28</sup> Anhalt, Section 9; Baden, Section 22; Brunswick, Article 41; Bremen, Sections 4 and 7; Hesse, Article 12; Lippe, Article 10; Mecklenburg-Schwerin, Section 45; Mecklenburg-Strelitz, Section 32; Prussia, Article 6; Saxony, Article 36; Schaumburg-Lippe, Section 10; Thuringia, Section 25.

<sup>29</sup> Anhalt, Section 42; Bremen, Section 4; Hamburg, Article 53; Hesse, Article 13; Lippe, Article 10; Mecklenburg-Schwerin, Section 44; Mecklenburg-Strelitz, Section 22; Oldenburg, Section 35; Saxony, Article 35; Thuringia, Sections 24 and 31.

<sup>30</sup> The Landtag may also order a referendum if the bill fails to secure a two-thirds majority on the second vote. A simple majority is sufficient for this order.

<sup>31</sup> Bremen, Section 4; Hamburg, Article 53; Mecklenburg-Schwerin, Section 44; Saxony, Article 35.

it back to the legislature for further consideration.<sup>32</sup> In Mecklenburg-Strelitz (Section 22, par. 2), if the referendum goes against the position of the Landtag, that body is to be dissolved; if it goes against the position of the state ministry, the latter must retire. Oldenburg (Section 35) has an interesting device for keeping the ministry and the legislature in agreement with each other as to law. If the ministry is not in harmony with the legislature on a given law, it may call for a joint conference. In case this does not produce the required results, either body may call for a referendum. From these brief descriptions of the provisions of the various states, it can readily be seen that there is no general right of veto by the state ministry over acts of the legislature. Some sort of objection, however, with the possibility of a popular referendum is practically always provided.

The next significant function of the ministry is the calling together of the Landtag. In nearly all the states the ministry has a right to convene the Landtag of its own volition, or to require the President of the Landtag to call it together.<sup>33</sup> In Hamburg (Article 15) it is a duty of the senate to see that elections of the legislature are held at the proper times.

The state ministry generally possesses certain powers in respect to the dissolution of the legislature. However, Oldenburg (Section 40) is the only state in which dissolution may be brought about by the ministry independently, as an alternative to its own retirement. As a rule the ministry possesses only the power to order a popular referendum on the question. In Anhalt this power is bestowed, with the proviso that after the ministry has ordered a referendum, the power of the Landtag to dismiss the ministry is suspended until the matter has been decided (Section 11). In Bremen the consent of one-third of the members of the legislature is needed before the senate can order such a referendum (Section 18). In Baden the Landtag may be dissolved by the state ministry as the result of a popularly initiated demand signed by

<sup>32</sup> Hesse, Article 13; Mecklenburg-Strelitz, Section 22; Prussia, Article 6; Thuringia, Sections 24 and 31; and Württemberg, Section 42.

<sup>33</sup> Anhalt, Section 10; Baden, Section 45; Bremen, Section 25; Brunswick, Article 20; Hamburg, Article 22; Lippe, Article 8; Lübeck, Article 30; Mecklenburg-Schwerin, Section 31; Mecklenburg-Strelitz, Section 13; Oldenburg, Section 54; Prussia, Article 17; Saxony, Article 8; Schaumburg-Lippe, Section 8; Thuringia, Section 13; Württemberg, Section 15.

80,000 qualified voters, which is supported in an election by the majority of qualified voters (Section 46). In Brunswick the state ministry is merely the agency for carrying out a popular vote on the dissolution of the legislature (Articles 23, 41, 42). In Lippe a referendum on the question of dissolving the Landtag must be held either when the cabinet so decides, or when one-third of the qualified electors demand it. In the former case, the right of the Landtag to dismiss the cabinet is suspended until after the referendum. Meanwhile the Landtag committee, described above, is authorized to participate in an advisory capacity in all business sessions of the cabinet until the results of the referendum are known. Upon its opposition the execution of a decision of the state Presidency is suspended (Article 11). In Prussia the ministry as such does not dissolve the Landtag. The minister-president, however, is one of a committee of three (the other two members being the presidents of the Landtag itself and of the state council, respectively) which may order dissolution. When popular petitions are initiated for the same purpose, they are sent to the ministry, which lays them before the Landtag with a statement of its own views (Articles 6, 14). In Saxony the Landtag can be dissolved by a referendum which has been either initiated by the people or ordered by the ministry (Article 9). In Schaumburg-Lippe there is no provision either for a dissolution directly by the ministry or through a referendum initiated by the ministry. The ministry acts simply as an agent in bringing about a dissolution through a referendum on a popularly initiated petition (Articles 10, 11). In Thuringia a dissolution of the Landtag may be brought about by the state cabinet when a referendum has determined in favor of dissolution (Section 16). The constitution of Württemberg also provides for dissolution of the Landtag by a referendum, which may either be ordered by the ministry or brought about by popular petition (Section 16).

It will be seen from this survey, that the powers of state cabinets in connection with the dissolution of the Landtag are not extensive. In only one state does the ministry have a free and independent right of dissolution. Elsewhere such a variety of method obtains as to make any exact classification difficult; but the general statement may be made that in nearly all cases the ministry must either depend upon the popular initiation of a petition for dis-

solution or submit the question of dissolution to the people. In Prussia a unique alternative is given to the clumsy and difficult method of awaiting a popularly initiated petition; this may be called dissolution by common consent.

The power to grant pardons and commutations of sentences<sup>34</sup> belongs to the ministry as a whole in all the German states except Württemberg, where it is exercised by the state president. In practically all cases the constitutions provide that amnesties shall not be granted except by law.

In a number of the German states the ministry is charged by the constitution with the supervision of the local government,<sup>35</sup> although the right of local self-administration is also established. The absence of constitutional provisions to this effect is not significant, as it is a general function of all the state ministries to exercise supervision over the local authorities to some extent. The mutual relationship and the extent of the self-administration are adjusted in each state by its own laws or municipal code, subject to national laws insofar as the Reich has legislative power.

Practically all the state constitutions provide that the ministries must appear upon request, before both the legislature and its committees. However, the ministry has the reciprocal right of appearing and being heard before the legislature or its committees at any time, or of sending authorized persons to represent it.<sup>36</sup>

On certain matters, such as the division of business among the various ministries, the passing upon bills which are to be introduced into the legislature, and other things specified in the state constitution, the laws and the cabinet's own order of business, action is

<sup>34</sup> Anhalt, Section 36; Baden, Section 16; Bavaria, Section 51; Brunswick, Article 36; Bremen, Section 60; Hamburg, Article 47; Hesse, Article 61; Lippe, Article 31; Lübeck, Article 47; Mecklenburg-Schwerin, Section 57; Mecklenburg-Strelitz, Section 46; Oldenburg, Section 43; Prussia, Article 54; Saxony, Section 31; Schaumburg-Lippe, Section 34; Thuringia, Section 47; and Württemberg, Section 33.

<sup>35</sup> Bavaria, Sections 22, 57; Hamburg, Sections 46, 68; Lippe, Article 40; Lübeck, Article 47, No. 6; Mecklenburg-Schwerin, Section 64, by implication; Mecklenburg-Strelitz, Section 40; and Prussia, Article 70, by implication.

<sup>36</sup> Anhalt, Section 15; Bavaria, Section 65; Brunswick, Article 37; Bremen, Section 31; Hamburg, Sections 23, 24; Hesse, Article 32; Lippe, Article 14; Mecklenburg-Schwerin, Section 36; Mecklenburg-Strelitz, Section 17; Prussia, Article 24; Saxony, Section 16; Schaumburg-Lippe, Section 15; and Thuringia, Section 20.

taken by the ministry as a whole in its collegial capacity. Several constitutions provide that cabinet action shall be by majority vote,<sup>27</sup> and the chairman is usually given the deciding vote in case of a tie, although in Thuringia a tie counts as a vote against the motion.

**The State President, or Minister-President.** The official head of the state cabinet—who, as we have seen, is given a number of different titles in the various constitutions—is not considered a head of state as is the President of the Reich, or even the governor of an American state. In most states he has little special authority except that of directing the business of the administration, acting as chairman, deciding a vote in case of tie, and performing the other functions usual to a chairman. In Bavaria, however, he has the added function of submitting to the Landtag a proposed list of the remaining ministers, whom he appoints with the consent of the Landtag. The same procedure is followed in respect to the dismissal of an individual minister (Section 58). In Hesse the state president also has the function of selecting the other members of the ministry, and of choosing one of them to act as his representative. These appointments require the confirmation of the Landtag. Although the state president represents the state in its external relations, state treaties require the consent of the entire ministry (Articles 37, 41). In Prussia, as in the Reich, the administration is partly collegial and partly controlled by the head of the cabinet. The minister-president, who is elected by the Landtag, appoints the other members of the ministry. Like the national Chancellor, he determines upon the general lines of policy and is responsible therefor to the legislature. Within these general lines of policy, the other ministers are individually responsible (Articles 45, 46). In Saxony, likewise, the minister-president is elected by the Landtag. He appoints and dismisses the other members of the ministry and names one of them as his substitute. He represents the state in its external relationships, but state treaties affecting objects of legislation require the consent of the Landtag. As in Prussia, he outlines the general policies, within which the individual ministers conduct their departments independently. In case the minister-

<sup>27</sup> Baden, Section 55; Bavaria, Section 63; Brunswick, Article 34; Bremen, Section 49; Hamburg, Article 38; Hesse, Article 42; Lippe (two out of three), Article 32; Oldenburg, Section 42; Saxony, Article 25; Schaumberg-Lippe, Section 37; Thuringia, Section 46; and Württemberg, Section 31.

president is retired, the whole ministry goes out with him (Articles 5, 25-29). The state president in Württemberg is also elected by the Landtag, and vested with the power to appoint and dismiss the other members of the ministry. He possesses several other powers, including that of appointing state officers. No mention is made, however, of the right to outline general policies. Although he represents the state externally, state treaties require the consent of both the cabinet and the Landtag (Sections 26-40). In Brunswick, Mecklenburg-Strelitz, and Lippe, the ministry seems to act in a purely collegial capacity.<sup>38</sup> From these facts the general statement may be made, that as a rule the minister-president in the larger states acts partly in the capacity of a chancellor; while in the smaller states, he is to all intents and purposes only the chairman of the ministry.

**The Individual Ministers.** The position of the individual ministers, in most states, is very similar to that of the national ministers. Within the cabinets the members are equals in collegiate authority. In their own departments they carry on their affairs independently, being responsible to the legislature for their actions. A formula quite generally employed is as follows:

"Each state minister directs the business entrusted to him, under his own responsibility in respect to the Landtag." In Oldenburg, however, even a matter that actually belongs to a particular department, having been assigned thereto by law, may be discussed and decided by the entire ministry. Thuringia provides that when a matter concerns more than one department, an agreement must be reached, or the cabinet as a whole must decide; also that matters which concern one department or division are to be submitted to the entire cabinet if they are of general political significance.<sup>39</sup>

**Special Administrative Authorities.** Several states have established special committees, councils or deputations in connection with their administrative systems. In Bremen, for instance, the

<sup>38</sup> Brunswick, Articles 32-40; Mecklenburg-Strelitz, Sections 24-29; and Lippe, Articles 25-42.

<sup>39</sup> Anhalt, Section 34; Bavaria, Sections 58, 59; Brunswick, Article 34; Bremen, Sections 51, 53; Hamburg, Articles 36, 38; Hesse, Article 40; Mecklenburg-Schwerin, Section 62; Mecklenburg-Strelitz, Section 28; Oldenburg, Section 42; Prussia, Article 46; Saxony, Article 29; Thuringia, Section 43; Württemberg, Section 36.

constitution establishes a financial deputation for the purpose of guarding the financial powers of the state. It is given the functions of establishing the budget estimates to be laid before the *Bürgerschaft*; supervising the administration of state property, inclusive of public economic enterprises; supervising the state income, expenditures, and debt service; and supervising the books, treasury, and accounting system of the state administration (Section 62).

Hamburg has a "citizens' committee," which consists of the president of the House of Burgesses as chairman, and twenty members of the House of Burgesses. This committee is to supervise the maintenance of the constitution and the public law. Upon the request of the Senate it may grant expenditures to a limited sum, under certain special circumstances; and may also authorize the alienation of small amounts of state property. In case of emergency it may issue minor legislative acts which have been proposed by the Senate, and which are valid until the legislature has passed upon the matters concerned. It can demand information from the Senate regarding state affairs, and require that documents be laid before it (Articles 27-31).

In Lippe there stands under the state presidency an administrative agency called the "Administration." This agency is organized into various divisions, whose functions are determined by the state presidency. The administration carries out the assignments of the state presidency, but acts independently within the limits prescribed by these orders and the laws. It can issue ordinances with the force of law only with the consent of the state presidency. The latter decides in regard to complaints against orders and ordinances of the Administration. The subordinate administrative authorities are under the supervision of the Administration, but this supervision can only be exercised within boundaries fixed by law. The Administration decides in respect to complaints against orders and ordinances of the subordinate administrative authorities (Articles 39, 40).

Mecklenburg-Strelitz has established a state council, which consists of the members of the ministry and of the interim committee. The chairmanship of this authority belongs to the state ministry. It is the highest instance for making decisions and for hearing complaints, in cases prescribed by law (Section 39).



The state council of Prussia corresponds quite closely to the Reichsrat. It consists of representatives of the provinces elected by the provincial diets (in Berlin by the city assembly, in the Hohenzollern Lands and in Posen-West Prussia by the communal Landtag). It is to be kept currently informed by the state ministry regarding the conduct of the state business; before the introduction of legislative proposals it must be given an opportunity to express itself; it may introduce drafts of laws into the Landtag through the ministry; it is to be heard before the issuing of executory provisions to the national and state laws, as well as before the issuing of general organizational ordinances of the state ministry. It has the right of protest against laws passed by the Landtag, and this protest can only be overcome either by a two-thirds legislative vote, or a favorable popular vote in case the Landtag submits the matter to a referendum. The consent of the state council is necessary, when the Landtag authorizes expenditures which exceed the amount proposed or agreed to by the state ministry. In case the state council does not consent to this, the resolution of the Landtag is only effective in so far as it coincides with the proposals or the grants of the state ministry (Articles 31-43).

Thüringia provides for a Landtag directorate, composed of the president of the Landtag and at least two vice-presidents. The function of this agency is to carry on business until the assembling of the newly elected Landtag (Section 18).

**Decentralized State Administration.** As a rule, the majority of the functions of the German states are not carried out directly by the central departments, but through the subordinate governmental divisions, which act in a two fold capacity as agents of the state and as agents of local self-administration. In the former capacity they are often ordered by the state ministry to administer national laws and ordinances which the state is to carry out. Article 15 of the national Constitution provides that if the national Cabinet wishes to send supervisory agencies to the lower authorities of the state, it must first secure the permission of the state central authorities. This prevents undue interference in the actual operation of the state organization. At the same time, the power of federal execution granted by Article 48 makes it possible to compel the state to see that subordinate agencies are properly carrying out their duties in respect to national laws.

Sometimes the national laws themselves lay duties upon subordinate units of the state. The legislative powers of the Reich, and the provision of Article 14 that the state authorities shall execute national laws unless the laws themselves provide otherwise, are not interpreted as meaning that the Reich shall merely express its will in a general way and leave it to the states to bring about the desired results in any manner and through any machinery. On the contrary, the Reich frequently makes use of its legislative powers to place responsibilities on the subordinate units of the state, and even on municipalities. This is done in the tax laws and ordinances and in many more. The relations between Reich and state are as flexible in this respect as in others, so that all sorts of adjustments are made to fit particular cases. Thus, to take an example at random, a national juvenile welfare law of 1922<sup>40</sup> provides that child service offices are to be established by communes or communal associations throughout the Reich, and that the highest state authorities are to arrange the districts for these offices. It also provides that the authorities of the Reich, of the states, of the self-governing corporations, and of the child service offices are to render mutual assistance for the fulfilment of the function of juvenile welfare.

The subordinate divisions of the various states, although they resemble one another in a very general way, differ from state to state in number, nomenclature, and function. The following pages will present a brief sketch of the organization of subdivisions in several states.

**Prussia.** In Prussia all general state administration is divided into three instances under the supervision of the state ministry, called provinces, administrative districts, and counties.<sup>41</sup> The counties may be either rural or urban. The administrative organization is planned to provide for a wide decentralization of state administration, to introduce the laity into the business of administration, and

<sup>40</sup> RGBl. 1922, p. 633; pt. II, especially Sections 5 and 8.

<sup>41</sup> Gesetz über die allgemeine Landesverwaltung vom 30 Juli, 1883 (GS. 165), with amendments. Section 1. The "township of Berlin" was incorporated in its present form by a law of April 27, 1920 (GS. 23). It constitutes at the same time a communal association and an administrative district, and ranks as a province for some purposes.

to secure an independent administrative-judicial supervision.<sup>42</sup> With this object in view, the following authorities were established:<sup>43</sup>

As administrative authorities:

The over-president for the province.

The president of the administrative district for the administrative district.

The Bürgermeister for the urban county.

The Landrat for the rural county.

To these are joined the following advisory (and to some extent administrative) collegial authorities:

The provincial council, to the over-president.

The district committee, to the president of the administrative district.

The city committee, to the Bürgermeister.

The county committee, to the Landrat.

Subject to special statutory exceptions, it is the function of the administrative authorities to carry on the general administration of the state laws, with the coöperation and advice of the collegial authorities. The hierarchial form of organization prevails here, so that the over-president and the provincial council are superior to the administrative district president and the district committee, and these in turn are superior to the organs of the urban county administration, the Bürgermeister and the city committee, and to those of the rural county administration, the Landrat and the county committee.

*State Administration in the Province.* There are twelve provinces in Prussia, in addition to greater Berlin and the Hohenzollern lands (which count as provinces for some purposes, and for which special arrangements are made that differ in various respects from the organization of the remaining provinces). The over-president of the province has considerable powers in respect to state administration. These are for the most part powers of super-

<sup>42</sup> Cf. Dieckmann, *Verwaltungsrecht* (1923), p. 578. Chapter IX of Dieckmann, and Chapter II of de Grais, give excellent descriptions of the internal administration of Prussia which are recommended to any person who desires a more detailed picture than is possible here. De Grais gives complete citations, which are lacking in the other book.

<sup>43</sup> See *Gesetz über die allgemeine Landesverwaltung* (Ges. Samm., 1885, p. 165 ff.), Sections 8-49. This law with its amendments is found in Brauchitsch, *Die Preussischen Verwaltungsgesetze*, 23d ed. (1925).

vision and direction, but they also include administration of the state functions which extend over the entire province or beyond the limits of a single administrative district, such as the management of canals and waterways, schools for police and for state troops. He acts as an agent of the highest state authorities in connection with various matters which are assigned to him; and he has a certain independence in so acting, under extraordinary circumstances such as the event of war, or a crisis in which delay might be dangerous. He directs and supervises both the authorities of the administrative districts and also various special institutions, undertakings, and agencies. As examples of the latter may be named the land banks (Rentenbanken), the public life and fire insurance establishments, and the provincial school board.<sup>44</sup> In these matters the over-president acts on his own responsibility.

The direct assistants of the over-president are higher administrative officers.<sup>45</sup> The provincial council<sup>46</sup> consists of the over-president as chairman, a vice-president selected from his assistants, and five other members, usually laymen, chosen by the provincial committee.<sup>47</sup> This council coöperates with the over-president in certain administrative functions, such as the issuing of provincial police ordinances, and makes final decisions in respect to matters affecting the province which are assigned to it by law.<sup>48</sup> It also acts as an administrative court in passing upon complaints against acts of the district and county committees,<sup>49</sup> "and in this capacity it must above all safeguard an equitable conduct of the administration."<sup>50</sup>

*State Administration in the Administrative District.* The district administration manages all internal affairs of the state which can be handled on a scale limited to a district, and which are not

<sup>44</sup> See Dieckmann, p. 579; de Grais, p. 88 ff. The latter gives citations to laws, ordinances, etc., which are too numerous to be reproduced here. The basic norms are found in an ordinance of April 30, 1815, and an instruction of December 31, 1825 (GS. 1826, p. 1).

<sup>45</sup> Landesverwaltungsgesetz (GS. 1883, p. 165), Section 9.

<sup>46</sup> *Ibid.*, Section 10.

<sup>47</sup> See Chapter X for description of provincial committee.

<sup>48</sup> See Ministerialblatt für die Preussische innere Verwaltung, 1887, p. 35; 1922, pp. 6, 1194; 1926, p. 68; also Landesverwaltungsgesetz (GS. 1883, p. 165), Section 137.

<sup>49</sup> See Chapter XIV, on administrative courts.

<sup>50</sup> De Grais, p. 90.

reserved to special authorities. Within each administrative district three divisions are established, as follows:

Internal administration. This covers state sovereignty, police, public health, statistics, supervision over cities within the district, and numerous other matters—everything, in fact, which the administrative district is called upon to handle, which is not included in the work of the other two divisions;

Church and school affairs;

Direct taxes, public domains and forests.<sup>51</sup>

The other organs of state administration within the district are the district administrative president and the district committee. The administrative president, with the necessary force of assistants, manages the affairs of the first division of the administration, on his own personal responsibility. The other divisions are managed in part by special officers, each of whom is personally responsible for a limited sphere of work; in part by the district administration as a whole. The administration is organized as a collegiate body, of which the administrative president is chairman, and the higher division officers are members. This body decides conflicts of competence among the divisions, and passes on drafts of bills and a few other matters of common interest. The administrative president, however, is responsible in a general way even for the work of the second and third divisions. His power to control their work extends to revoking decisions of either a division or the district administration as a whole, and to ordering that work be carried on according to his ideas and on his own responsibility.<sup>52</sup>

The district committee consists of the administrative president as chairman, and six other members. Two of these members, of whom one must be qualified for the judicial service and one for the higher administrative service, are appointed by the state ministry for life. The other four members are selected by the provincial committee. The district committee acts as a supervisory and deciding authority for matters of state administration, and also as district administrative court.<sup>53</sup>

<sup>51</sup> *Regierungs-Instruktion* of October 23, 1817 (GS., p. 248), Sections 1, 2, 6-10, with later amendments and modifications. For list of these, see de Grais, p. 91 ff.

<sup>52</sup> *Landesverwaltungsgesetz*, Sections 17-24; *Regierungs-Instruktion*. Section 42 ff.

<sup>53</sup> *Landesverwaltungsgesetz*, Sections 28-35. See also Hatschek, *Lehrbuch*, Vol. II, 17.

A few special *ad hoc* agencies exist within the administrative district, such as school boards for higher schools, higher mining offices, etc.<sup>54</sup>

*State Administration in the County.* Within the administrative district are subdivisions known as counties. These are of two kinds, namely, rural counties and urban counties. The latter are composed of cities of more than twenty-five thousand inhabitants which have been granted the status of independent counties in response to a petition to the Minister of the Interior.<sup>55</sup>

In contrast with the province and the administrative district, where nearly all branches of state administration are brought together under a general organization, the county has many special authorities performing individual functions. Among these are the school council for lower schools; the land registry office for the real estate tax, surveying, etc., the industrial council, and many others.<sup>56</sup> However, there are in each county agencies of general state administration for all functions not given over to such special authorities.

The head of the state administration in the rural county is the county councillor (Landrat), who is a direct subordinate of the president of the administrative district. The county councillor is the chief police authority of the county, and the chief authority for public health, poor relief, construction, and the like.<sup>57</sup> With him is associated the county committee, of which he is chairman and executive officer. This committee sanctions the police ordinances issued by the county councillor, makes decisions on general matters of administration, and acts as an administrative court of first instance. Both the county councillor and the county committee act in the additional capacity of organs of self-administration within the county. They also supervise the administration of such communes as are not organized as independent counties.<sup>58</sup> In the urban counties the general administration of state functions belongs to the mayor (Bürgermeister) and to a city committee consisting

<sup>54</sup> For list, see de Graiss, p. 97.

<sup>55</sup> Ordinances of April 30, 1815, Sections 36, 37; County Ordinance of 1872 GS. 1881, p. 180), Section 4.

<sup>56</sup> For complete list, see de Graiss, p. 99.

<sup>57</sup> County Ordinance, Sections 76-78.

<sup>58</sup> Landesverwaltungsgesetz, Section 35; also County Ordinance of 1872, Sections 76-78, 130 ff.; Zuständigkeitsgesetz of August, 1883, GS., p. 237.

of the mayor as chairman, and four other members. In cities of more than ten thousand inhabitants, even though they are a part of a rural county, some of the functions otherwise exercised by the county committee are transferred to the city council or the mayor and the magistracy.<sup>59</sup>

All rural counties are subdivided for police purposes and some other state functions, into precincts (*Amtsbezirke*). Each precinct is administered by a director (*Amtsvorsteher*) and a committee of representatives of all communes within the district. (County ordinance, Section 56.)

**Bavaria.** Bavaria is divided into administrative areas called counties, and these in turn are divided into smaller units called districts. The chief officer in the county is the general commissioner, who is likewise the president of the county government. The county government is an administrative body standing directly under the state ministry. It takes action as a whole in respect to matters specified by law or ordinance, but conducts most affairs departmentally, through the three separate chambers that compose it, namely, the chambers of internal administration, finance, and forests.<sup>60</sup>

The county administration acts independently and as of its own competence, in most administrative matters; but in certain cases named in the law it must consult the members of the state ministry who are in charge of the matter involved, and must request consent to any proposed action.<sup>61</sup>

The chamber of internal administration deals with all matters which are handled by the state departments of foreign affairs and of the interior, insofar as they can be administered by the county, and are not assigned to special authorities. Among its functions are

<sup>59</sup> *Landesverwaltungsgesetz*, Section 4, II; *Zuständigkeitsgesetz*, Sections 109, 114; Ordinance of December 31, 1883 (GS. 1884, p. 7), Section 1; Ordinance of July 30, 1900 (GS., p. 308); Ordinance of May 19, 1908 (GS., p. 133). For special provisions affecting cities in Hanover, County Ordinance of 1872, Section 28. For Berlin, State Law of April 27, 1920 (GS. 123), Section 40.

<sup>60</sup> *Verordnung, Die Formation (etc.)—der obersten Verwaltungs-Stellen in den Kreisen betreffend*, *Regierungsblatt*, 1817, p. 233 ff.; *Verordnung, Aenderungen der Organisation der Staatsforstverwaltung betreffend*, *Gesetz- und Verordnungs-Blatt*, 1908, p. 1087 ff.

<sup>61</sup> *Verordnung*, December 17, 1825, *Regierungs- und Intelligenz-Blatt*, 1825, p. 1049 ff., Sections 16 ff.

public education, instruction, and morals, church matters, public health, state police, municipal affairs, statistics, etc. Each of these functions is outlined in considerable detail, together with methods of administration and of control.<sup>62</sup>

The chamber of finance has charge of the execution of financial laws and ordinances within the county, of collections and disbursements in the name of the state, of treasury and budgetary matters, of public property, and the like.<sup>63</sup>

The chamber of forests, which is under the supervision and direction of the state minister of finance, is in charge of the state forests, game preserves and pasturage areas within the county. It also supervises the management of similar properties belonging to municipalities and other corporations.<sup>64</sup>

The smaller subdivision called the administrative district, carries on its functions through the district office. This office is the executive organ of the state ministry and the county government for matters within the district; and the general administrative agency of this area, for the internal administration of the state. It also acts in the first instance in administrative controversies. The district office is composed of a chief officer known as the district director, and associates such as assessors, secretaries, assistants, and other helpers. The district director is the official superior of his associates, and is entirely responsible for directing the business of the office. Official superiors of the district office are the county governments as a whole, the chambers of internal administration in particular, and the state ministry of the interior.<sup>65</sup>

**Saxony.** Saxony is divided for purposes of state administration into administrative districts and smaller ordinary districts. The chief state organ in the administrative district is the county directorate, at the head of which is the county director. Other members of the directorate are his representatives and assistants. The duties of the county directorate include supervision over the administrative authorities which are directly subordinate to the state ministry of the interior, supervision over cities, and the management of all

<sup>62</sup> Verordnung of December 17, 1825, Sections 21 ff.

<sup>63</sup> *Ibid.*, Section 87 ff.

<sup>64</sup> Ordinance of December 15, 1908 (G. u. V.-Blatt, p. 1087 ff.), Sections 1, 5-8.

<sup>65</sup> Ordinance of December 21, 1908, concerning the district offices, Gesetz- und Verordnungsblatt, 1908, p. 1121 ff.



other affairs within the administrative district which are not assigned elsewhere by law. The county directorate is also an administrative tribunal for making decisions in first instance as to (1) matters assigned by state or national law to be decided or disposed of by the "higher administrative authorities" or the "government authorities," and (2) certain administrative controversies involving cities and municipalities; and decisions in second instance (when the law makes no other provision) in regard to certain appeals and complaints, including those made against decrees and decisions of the administrative organs of the smaller districts. The county committee assists the county directorate, in the double capacity of participant in certain decisions, and of advisory organ.<sup>66</sup>

The district administration of state functions is carried on by organs similar in structure to those just described, namely, an official directorate with an official director at its head, and a district committee. The official directorate carries on all matters of state administration which are not managed by the authorities of the cities or by other special authorities and organs, supervises local police administration and handles some phases of it, exercises certain powers of supervision over rural communes and cities of the small and intermediate classes, decides most administrative judicial controversies in first instance, and performs various other functions assigned by law. The district committee takes part in the making of certain decisions, and also acts in an advisory capacity.<sup>67</sup>

**Württemberg.** Until 1924 Württemberg had two state administrative subdivisions, the county and the district. The separate administration of the county was abolished by a ministerial ordinance of March 10, 1924 (which was issued under a legislative authorization).<sup>68</sup> A division for the administration of county and corporate bodies was connected with the ministry of the interior; to this division were assigned all matters previously handled by the county administrations, with a few exceptions. This division has a director of its own, and a certain degree of independence.<sup>69</sup> The changes

<sup>66</sup> Gesetz, die Organisation der Behörden für die innere Verwaltung betreffend, of April 21, 1873 (Gesetz- und Verordnungs-blatt, 1873, p. 275 ff.), Pt. II, Section 22 ff.

<sup>67</sup> *Ibid.*, Section 6 ff.

<sup>68</sup> Regierungsblatt für Württemberg, 1924, p. 120. For the authorization, see *ibid.*, 1923, p. 525.

<sup>69</sup> *Ibid.*, 1924, p. 173. See also *ibid.*, 1925, p. 41.

thus brought about have resulted in a considerable simplification of state government, a reform which is receiving much attention in Germany to-day.

The district organization is unchanged; but a short list of functions formerly performed by the county is added to its previously established duties, which cover all objects of the internal administration of the state not assigned elsewhere. These functions include supervision over local administration, the issuing of certain police ordinances, the duty of protecting the internal safety of the state, public safety and order, public health, and numerous other matters.<sup>70</sup> The state administrative organ of the district is the directorate, with a chairman at its head.<sup>71</sup>

**Other States.** The present administrative subdivision of Thüringia is the county. The state was composed of seven small states, each of which was called a "territory" for a time, and each of which performed such administrative functions as were not taken over by Thüringia (Sections 2, 63 ff.). In 1922, however, a law was passed converting these territories into counties, with the usual organs of state administration in counties, a director with an advisory committee.<sup>72</sup>

In Baden the district is the subdivision for state administration. The work is carried on by the district director, assisted and advised by the district council.

Hesse is divided into provinces, which have relatively few functions of state administration, and into counties, which perform most of such functions. The chief officer of the state in the county is called the county councillor; with him is associated the county committee.

In the other states the counties are usually the chief administrative districts for the carrying on of state administration; except in the smallest states, where the state and the local administration are under the control of the same authorities. The Hanseatic city states employ the "deputation system," which consists in the appointment of deputations (committees) composed of members or commissioners from the senate and the House of Burgesses, to confer

<sup>70</sup> For general list, see *Regierungsblatt*, 1906, p. 442 ff. (444, 445). For additional list, see *ibid.*, 1924, p. 173 ff., Section 5.

<sup>71</sup> *Regierungsblatt*, 1906, p. 442 ff.; 1907, p. 643.

<sup>72</sup> *Gesetz-Sammlung*, 1922, p. 297 ff.

upon administrative as well as legislative matters, to supervise certain branches of administration, and occasionally to undertake direct administration. The state and local administration are here scarcely distinguishable.<sup>73</sup>

**Summary and Conclusions.** All the states of Germany, with the exception of Waldeck, which is soon to become a part of Prussia, have adopted new constitutions since the war. The provisions of the national Constitution affecting the states, particularly the requirements and the norms in respect to such important subjects as the form of government, the election laws, and the relationship of the state cabinet to the legislature, have had the inevitable result of bringing about a considerable similarity in the state constitutions, on these points. Under the heading, "Fundamental rights and duties of Germans," the national Constitution not only establishes personal rights which the states must respect and with which they can interfere only under exceptional circumstances, but also outlines many basic policies with which the constitutions and laws of the states must be in harmony. The state constitutions, then, are very much affected by the national Constitution. Even where the latter does not impose a control over the state constitutions, in many instances it has been used as a model. The fact that the national constitutional bill of rights is applicable to the state makes a general bill of rights in the state constitutions superfluous, and only a few states have inserted such provisions. One is impressed by the brevity of these constitutions, all of which together would occupy little more space than the constitution of Oklahoma. The most important features of the state constitutions are, naturally, the provisions concerning the legislature and the administration and their relationships to each other.

Not only the German Reich, but every member state as well, has definitely departed from the bicameral legislature. Like the Reich, each state has a unicameral legislature. In accordance with the requirements of the national Constitution, the state legislature is everywhere composed of representatives of the people elected by universal, equal, direct, and secret suffrage, on the principle of proportional representation. Some of the German states have

<sup>73</sup> Bremen, Sections 28, 62; Lübeck, Articles 48, 49, 50. See O. Meissner, *Das Staatsrecht des Reichs und seiner Länder*, p. 230.

adopted the principle of popular participation in legislation to a greater extent than have even the American states. As a rule the people may initiate a law and pass upon laws referred to them; but in many cases they may also dissolve the legislature, either by initiative, or by a favorable vote upon a motion for dissolution referred to them by the ministry.

The state legislatures in Germany, like all legislatures to which cabinets are responsible, have much influence over the course of public administration. The various constitutions establish several methods by which such influence can be exercised. In all states the legislature participates either directly or indirectly in the selection of the ministry, thus exercising a certain degree of control. The strongest and most significant control of course lies in the parliamentary relationship, that is, in the fact that the individual ministers, as well as the entire ministry, must have the confidence of the legislative authority. The matter of a vote of lack of confidence is carefully guarded in several constitutions, so that no bare majority obtained by accident or political trickery can upset the cabinet. In several states the cabinet may ask the people to decide whether it shall withdraw or the legislature shall be dissolved.

Provision for committees of investigation, which is made in nearly all the state constitutions, furnishes a method whereby a significant minority of the legislature may bring about an investigation into any aspect of governmental activity. This means that not only the party in power, but also the opposition, may be able to exercise some real control over the honesty and efficiency of the administration. A very interesting method of control is the establishment of interim committees to watch over the interests of the people and the legislature as against the cabinet, when the legislature is not sitting. Although interim committees are not established in all states, yet where they do exist, they may exercise a certain degree of control over administration, which has especially valuable potentialities in times of disturbance or crisis.

The majority of the German states provide for the impeachment of their ministers and various other officers by the legislature. The motion for impeachment must be introduced by a substantial number of members, and its passage requires as a rule an extraordinary majority. It is interesting to note that in the states, as in the Reich, the impeachment trial does not take place before the legis-

lature itself, but before a special judicial authority. As the vote of impeachment can only concern violations of the constitution or the laws, but never questions of policy, it is entirely fitting that the trial should be as nearly judicial as possible. This is greatly preferable to the system that prevails in the United States, of holding impeachment trials before such a highly partisan authority as an upper house of the legislature.

The legislative functions of the state cabinets bear a close resemblance to those of the national Cabinet. In several states the cabinet may convene the legislature; and in a number of instances the cabinet may either dissolve it, call for a popular referendum on the question of dissolution, or act as the agent of the people in connection with a popularly initiated bill for dissolution. As in other parliamentary governments, the state cabinet shares with the body of the legislature the right to initiate laws, and ordinarily does initiate all bills of major importance. It is expected to act as the leader in matters of public policy, and to integrate policy and administration.

It is interesting to note that the state constitutions do not provide for an individual executive as head of state, possessing powers like those of a governor or a president. Although in some instances the minister-president or corresponding authority may select or help to select the other members of the cabinet, may represent the state in its external relations, and may possess a few other special powers, yet on the whole his position is rather that of chairman of the ministry than that of head of state. In general the cabinet is a collegial authority for matters of public policy or of common concern. Affairs which merely concern a particular branch of administration are handled by the individual ministers through their separate departments. The pardoning power is usually a function of the ministry as a whole, sometimes of the leader of the cabinet.

An important function of the ministry or of individual ministers is the appointment of state officers. Since nearly all official appointments are made for life or for a fixed term, this function possesses relatively little partisan significance, but merely implies a centralization of administrative functions.

The state administrative system of Germany is based on the fundamental principle of combining centralized supervision and control over administration with decentralized execution of admin-

istrative functions. The state administrative machine is, therefore, a hierarchical organization, with the state cabinet and ministerial departments at the head acting as the supervisory, controlling, and appellate authorities; and with state authorities of one, two, or three instances, corresponding to the administrative subdivisions (which are ordinarily units of self-administration also, for certain functions). The work of these state authorities includes the direct administration of various functions, the supervision of subordinate authorities, and administrative adjudication in the lower instances. In accordance with the general custom of parliamentary governments, most of the German states provide that the cabinet shall organize the administration either as a whole or in part, by creating ministerial departments, distributing functions among them, establishing the structure and the personnel of subordinate administrative agencies, assigning their powers, duties, and functions, and so forth. Although the subdivisions of the state generally possess powers of self-government in respect to certain specified affairs, these powers are exercised under the supervision of the state, which is sometimes direct, and sometimes hierarchical by way of a series of lower instances.

The names and the number of the subdivisions, and the names and functions of the agencies of state and local administration within each, vary greatly. In most of the larger states (excepting Prussia, with its three subdivisions) there are two subdivisions beside the purely local. The general type of state agency in the subdivision is that of an individual head of administration, with whom is associated a partly administrative, partly advisory council or committee. Each agency is supervised by that of the next higher unit, and in general by the state ministry.

The frequent introduction of the lay element into these councils and committees gives the private citizen an opportunity to participate to a certain extent in the administration of state and national laws and in the framing of local regulations.

Among the laws administered by the subordinate agencies of the states are many national laws which the states are to carry out. In some cases the assignment of functions to the lower authorities is made by state law or by the ministries; in some cases it is made by national law. For direct supervision of the subordinate state administrative authorities by national agencies, the consent of the

state ministry is needed. As a rule, supervision in respect to the administration of national as well as state laws is a function of the state ministry.

A number of observers, both Germans and foreigners, claim that under modern conditions, with rapid communication, so many units of government, carrying so great a number of persons on the payroll, mean unnecessary complexity and expense. The variety of nomenclature is also unsatisfactory, in particular the use of the words county, district, and province, each one of which has a different meaning in different states. If a single subdivision, with the same name in all the states, and with an executive head and a council also called by uniform names, could be agreed upon by the Reichsrat and adopted by the various states, the result would doubtless be a considerable economy of money and an administrative simplification and integration. "All the world would make the discovery that there is a German administrative system, so organized as to be easily understood."<sup>4</sup> Another reform which may be harder to bring about, but which is evidently not impossible in view of previous changes since the World War, is such a réarrangement of state boundaries as to provide for geographical contiguity in the domains of every state.

Despite all the diversities which have been discussed, there is, nevertheless, so considerable a degree of uniformity and coherence in German public administration, that for many purposes the administration of the Reich, of state, of locality, and of city, may be considered as parts of one general system. The Reich may and does pass laws and issue ordinances imposing administrative functions upon all these governmental units, and it has means of compelling the state to carry out such laws and to superintend their proper administration by the localities and cities. Each unit thus takes its place in the system. This arrangement brings about the requisite uniformity in the administration of national laws, and yet avoids many of the difficulties arising from too great a centralization of administrative functions, such as excessive bureaucracy, absentee administration, or administration by uninformed strangers, and the resulting gulf between the administrative authorities and the ordinary citizen.

<sup>4</sup> Mayer, *Einheitliche Verwaltungsbezeichnungen in Deutschland*; *Verwaltungsarchiv*, Bd. 29, No. 4, October, 1922, p. 422 ff. (427).

## CHAPTER X

### LOCAL GOVERNMENT AND ADMINISTRATION

The legal basis for local government in Germany consists of  
✓ national constitutional provisions and laws dealing with the subject,  
✓ state constitutional provisions, codes, and laws affecting local government, orders and ordinances based on the foregoing, local provisions, and prescriptive rights and customs.

The national Constitution, as will be shown later, not only establishes the right of local self government, but also lays down certain norms which must be followed by the localities. The state constitutions generally have sections dealing with local self-government. The great majority of provisions on this subject, however, are found in the various state codes. There may be separate codes governing the local governmental units as state authorities, and providing for local self-government. Thus, Prussia has three main laws which govern the local divisions as state agents.<sup>1</sup> Every separate province, except the seven eastern provinces, which are governed alike, has as a rule four different codes, which apply respectively to the province, the county, the city, and the rural commune.<sup>2</sup> Bavaria has numerous laws controlling the local governmental units as state administrative authorities, and a general code for these units as agents of local self-government.<sup>3</sup> Most of the larger states have special codes covering the various units of local government; or in some cases, two or more units are included in the same code.

These codes generally have provisions regarding the organization of the local divisions, their boundaries, the conditions under

<sup>1</sup> Gesetz über die allgemeine Landesverwaltung, July 30, 1883 (GS. p. 165). Gesetz betr. die Verfassung der Verwaltungsgerichte und das Verwaltungsgerichtsverfahren, of July 3, 1875, and August 2, 1880 (GS. 1880, p. 328 ff.). Gesetz über die Zuständigkeit der Verwaltungs- und Verwaltungsgerichtsbehörden, August 1, 1883 (GS. p. 237).

<sup>2</sup> These are given in the bibliography at the end of this book.

<sup>3</sup> Gesetz über die Selbstverwaltung, May 22, 1919 (Gesetz- und Verordnungs-Blatt, 1919, p. 239).



which they may unite with other communities, their governmental organs, the extent of their rights of local self-government, the relationship of different organs to one another, the selection of the local authorities, the rights of officers and employees in respect to retirement and pensions, their specific powers, their budgets and financial transactions, and the methods by which the local governments are controlled.\*

**Relation of the Local Units of Government to the Reich.** Although primarily the different German states control their own local governments, as in the United States, there is a considerable sphere of control exercised by the Reich.

Article 127 of the national Constitution provides that "Communes and communal associations have the right of self-administration within the limitations of law," thus laying down by national enactment one of the fundamental relationships between the local units and the Reich and states. This provision does not change existing practice, but it may, nevertheless, act as a guarantee against infringement of a historic right. It establishes the principle that there can be no arbitrary interference by administrative authorities with local self-government, which is subject to limitation only by constitutional provisions, statutes, or ordinances having a legal foundation.\* The limitations in question may be those of the Reich or of the states, but are commonly the latter.

The national Constitution itself, however, has established norms which to a considerable extent control local governmental action. Article 17 provides for universal, equal, direct and secret suffrage, in accordance with the principles of proportional representation, as a basis for communal elections. Article 10 gives the Reich the right to establish the fundamental principles of a law of officers for all public bodies, which of course would include local governments. By the provision of the second paragraph of Article 110, that "every German in any state of the Reich has the same rights and duties as the persons belonging to that state," the local govern-

\* For an analysis of these codes in respect to cities, see Meyer-Lülmann, *Ein Querschnitt durch die deutschen Städtverfassungen*, in *Zeitschrift für Kommunalwirtschaft*, 1925, p. 50 ff.

\* Anschütz, *Die Verfassung des Deutschen Reich*, note to Article 127; Poetzsch, *Handausgabe der Reichsverfassung*, note to Article 127.

ments as well as the states are debarred from discriminating against persons from other states. This might be significant in respect to civil service regulations, etc. Articles 143, 146, and 148 contain provisions in respect to the public school system that affect the rights of local governmental units. Articles 119 and 122 impose upon the local units as well as the states the function of caring for family relationships and the upbringing of the young. Article 156 provides that the Reich may socialize suitable economic undertakings and may assign to itself, to the state, or to the local communities, a share in the management of these undertakings. Under this provision, for example, it might be possible for the Reich to give over to local units a great part of the administration of undertakings such as electrical establishments. Article 133 provides that all citizens are obliged to render personal service to the state and the local community. We have already seen to what an extent the Reich controls the tax systems of the localities, particularly through the financial equalization law.

The Reich may also exercise a very great indirect control over local governments because of its control over civil and criminal law, poor relief, associations and public meetings, public health, theaters and cinemas, the law of expropriation, commerce in foodstuffs and other necessities of daily life, labor laws, the promotion of social welfare, the protection of public order and safety, and allied subjects.<sup>6</sup> Furthermore, its power of establishing fundamental principles concerning such matters as education and libraries, the law of officers of all public corporations, restrictions on landed property, housing, the distribution of population, and the disposal of the dead, may greatly influence local administration.<sup>7</sup> The same thing is true of the establishment by the Reich of uniform standards for welfare work and the protection of public safety and order. In nearly all these cases the Reich may exercise a legislative control which could be exercised in the United States only by the member states.

The legislative powers of the Reich and the states may be so exercised that functions are assigned directly to the local units by national law, or national and other functions are assigned to

<sup>6</sup> Constitution, Article 7.

<sup>7</sup> Article 10.

them by the states. This relationship is well expressed in the Communal Code of Saxony, which provides:<sup>8</sup> "The communes are required to administer the affairs of the Reich, of the state, or of other public legal authorities, which are legally transferred to them for execution (transferred business), according to the directions of the competent authorities." Many national laws do assign affairs directly to local units of government, but most national affairs which are handled by them are assigned to them by the state authorities, under state executory laws, or ordinances or assignments of the higher administrative authorities.

Article 15 of the national Constitution provides that the national Cabinet exercises supervision in affairs belonging to the legislative powers of the Reich. Paragraph 2 of the same article provides: "To supervise the execution of national laws it (the national Cabinet) is empowered to dispatch commissioners to the central authorities of the states, and with the consent of the latter, to the subordinate authorities." This provision not only indicates that the national laws will be carried out by local authorities, but also shows to what an extent the nation could exercise direct control over authorities, in case it received the consent of the central state authorities. We have seen in another chapter,<sup>9</sup> to what lengths the Reich may go in the control and management of local governmental units under the emergency powers of the president.

Finally, there can be no question that the bill of rights embodied in Part II of the national Constitution, under the caption: "Fundamental Rights and Duties of Germans," controls not only the Reich and the states, but also the local governmental units.

Local government in Germany, then, presents a contrast with local government in the United States, in that it is not entirely divorced from the national government, but forms in a very real way a part of an entire governmental system.

### **Relationship of the Local Governmental Units to the State.**

Although certain writers hold that the local units of government historically have a right to their own existence, independent from the state, and that they possess their own sphere of authority be-

<sup>8</sup> Gemeindeordnung, August 1, 1923, Section 4, No. 4 (Sächs. Gesetzblatt, p. 373).

<sup>9</sup> Chapter IV.

cause of their nature and purpose, this view cannot be sustained any more than can the same view in the United States.<sup>10</sup>

According to strict legal theory, the relationship of local units of government to the state to-day, whatever it may have been historically, is the same as that of municipal corporations in the states of the United States; that is, they are entirely subordinate to the will of the state. The entire power of the local units rests upon assignment. They are primarily state establishments for the purpose of carrying out the activities of the state. The state may at any time create new local governmental units, it may divide them, it may do away with a unit and itself take over its functions, it may establish controls over the various units, it may determine their form of organization, their officers, and their functions. It can assign or take away the functions of communities as it sees fit. In respect to local governments the power of the state is only controlled by the national constitution or laws.<sup>11</sup>

The legal position of the cities and other local governmental bodies can best be demonstrated by the fact that in all cases they are governed by state constitutions and state codes under which they operate.<sup>12</sup> Although the state constitutions themselves, after the example of the national Constitution, generally give express recognition to the right of local self-government,<sup>13</sup> this right is usually limited by some such form of words as, "within the limits of law."

The national Constitution, in guaranteeing the right of local self-government, does not interfere with the legislative power of the state to establish the forms and controls under which this right shall be enjoyed.

<sup>10</sup> For a brief historical survey of the right of local self-government, see Hatschek, *Ausserpreussisches Landesstaatsrecht* (1926), p. 70 ff.; Gierke, *Die Steinsche Städteordnung* (1909), and Peters, *Grenzen der Kommunalen Selbstverwaltung in Preussen* (1926).

<sup>11</sup> For discussions of this point, see Hans Helfritz, *Grundriss des preussischen Kommunalrechts*, pp. 9, 10; Marx Matthias, *Die städtische Selbstverwaltung in Preussen*, Chapter I; Hans von Eynern, *Zur Reform der preussischen Selbstverwaltung*, in *Zeitschrift für die gesamte Staatswissenschaft*, Bd. 82 (1927), p. 5.

<sup>12</sup> Eynern, p. 5.

<sup>13</sup> Baden, Section 20; Bavaria, Section 22; Brunswick, Article 44; Bremen, Section 71; Hamburg, Article 67; Hesse, Article 62; Lippe, Article 40; Mecklenburg-Schwerin, Section 64; Mecklenburg-Strelitz, Section 40; Oldenburg, Section 31; Prussia, Article 70; Saxony, Article 49 (by implication).

The power of the state is commonly exercised in such a way as to leave to the local units a good deal of freedom. Their legal status is, as a rule, that of independent corporations, possessed of the capacities, public and private rights and relationships, of juristic persons or public-law corporations, and of such other rights and powers as are especially bestowed by law.

As has been pointed out before,<sup>14</sup> the units of local government in Germany act in two capacities. They are at the same time agents of the state for the carrying out of state or national functions, and units of local self-government. The various communal codes deal with their rights and duties in both capacities. Our present interest lies in the latter.

The communal code of Saxony, after declaring that communes are public-law corporations with the right of self-administration, provides as follows:

The communes administer . . . [their own affairs] independently. The communes have the right and the duty, within the boundaries of administering their own affairs, to take all measures that seem proper for the advancement of the economic and intellectual development of the individual, and the welfare of the whole of their members.

To the affairs of the communes themselves, insofar as the laws do not provide otherwise, belong those branches of local administration whose function it is to fulfil the public needs of the local community, especially poor relief, welfare work, public health work, the veterinary system, local administration of public highways, markets, [supervision of] business, dwellings, and construction, fire protection, and the protection of morality. The communes possess also within these limits the right to exercise the police power (communal police power). The fulfilment of police functions extending beyond the domain of the commune is reserved to the state.<sup>15</sup>

The Württemberg law provides as follows: "The communes have the right, within the limitations prescribed by law, to administer independently all affairs legally assigned to them; there belongs to them particularly the administration of the communal property, the care of the common interests of the members of the community, and the administration of the local police."<sup>16</sup>

<sup>14</sup> Chapter IX.

<sup>15</sup> Gemeindeordnung, Sächs. GBl. 1923, p. 373, Section I, 4.

<sup>16</sup> Gemeindeordnung, Article 8 (Regierungsblatt, 1906, p. 323 ff.).

In some cases, these broad general statements are followed by more detailed lists of the rights that may be exercised by the commune, which are similar in general to those bestowed by Saxony in the law cited above. In other cases, the communal code does not detail the powers of the commune, which are established in part by other laws and legal ordinances, and in part, perhaps, by usage.

An excellent general statement of the position of the commune, which is applicable in the main throughout Germany, is found in a decision of the Prussian Superior Administrative Court, of February 25, 1885.<sup>27</sup> This decision reads in part as follows:

The Prussian law furnishes no definition of the conception of the commune and of its functions. Therefore recourse must be had to the common law. . . . But according to the common law of Germany . . . the commune does not pursue more or less isolated ends, but has the right to engage in all relationships of public life. The commune can accordingly embrace within the sphere of its operations everything which furthers the welfare of all, or the material interests and the intellectual development of the individual. It can establish, take over and support enterprises of general utility, which serve these purposes. The autonomy of the commune upon all these territories will be limited only by state supervision.

Many laws and codes refer to the right of the various local units, particularly the communes, to manage their "own" affairs. What are to be considered as their "own" affairs cannot be expressed except in general terms. The laws quoted above and the decision of the Prussian Superior Administrative Court may serve, however, to show the wide extent of this conception.

The "own" affairs of local units may be either obligatory or voluntary. The latter may be taken over and likewise given up by them without the consent of the state, so long as the law is not contravened. They must also manage affairs assigned to them by the state or its authorities. In these affairs the communes and their organs are dependent upon state service instructions and assignments.<sup>28</sup>

<sup>27</sup> Entscheidungen des Oberverwaltungsgerichts, Vol. XII, p. 155 ff. [158]. See also Vol. XIII, p. 89.

<sup>28</sup> Hatschek, Ausserpreussisches Landesstaatsrecht, p. 79.

The smallest unit of local self-government is the commune, or municipality. There are two kinds of municipalities, urban and rural. The next higher unit may be called the county.<sup>19</sup> Cities of a certain population are independent from the county government, and in a few cases large cities form urban counties. Above the county in several states is a larger unit, which may be given the general name of province, since it is so called in Prussia. All these local units may unite with others of the same or a different class for the carrying on of certain enterprises.<sup>20</sup>

As a rule each local self-governing authority has both a popularly elected representative assembly and an executive selected by the assembly. The assembly is vested with the power to make decisions which may be considered sub-legislative in nature.<sup>21</sup>

Only a few examples of the local governmental systems can be given, as these will suffice to present a general picture, whereas an endeavor to discuss all the systems would add little to our understanding of the subject, but would lengthen our study unduly. The systems selected for examination are those of Prussia, Bavaria, Saxony, Württemberg, Baden and Hesse.

**Prussia.** Prussia's system of local government is the most complex in Germany. The state is divided into about a dozen provinces, one of which is the city of Berlin.<sup>22</sup> The provinces in their self-administering capacity are governed chiefly by the Provincial Code for the eastern provinces, which has been extended to other provinces until it is now in operation, with minor variations, throughout nearly all of Prussia.<sup>23</sup>

<sup>19</sup> The nomenclature is not uniform; Kreis is the usual word.

<sup>20</sup> For a more detailed discussion of the structure of local governmental units, see the preceding chapter. The same framework is used for state administration and for local self-administration.

<sup>21</sup> For a summary of the local self-governing authorities in Germany see G. M. Harris, *Local Government in Many Lands* (1926), p. 102 ff.; see also Meissner, p. 272 ff.

<sup>22</sup> For the status of Berlin, see GS. of Prussia, 1920, p. 123 ff., with later amendments.

<sup>23</sup> *Provinzialordnung für die östlichen Provinzen*, of June 29, 1875, and March 22, 1881. See also Prussian laws extending this code to other provinces; of May 7, 1884; June 8, 1885; August 1, 1886; June 1, 1887; May 27, 1888. See various amendments and other enactments, especially the law on elections of December 3, 1920 (GS. 1921, p. 1). It is to this code (as amended) that the following citations will refer.

The chief organs of self-administration in the province are the provincial assembly (Provinziallandtag), the provincial committee (Provinzialausschuss), and the provincial director (Landesdirektor or Landeshauptmann).<sup>24</sup>

*The Provincial Assembly.* The provincial assembly is a popular representative body, elected by the inhabitants of the province according to the principle of proportional representation. The number of its members varies according to population. It acts as a minor legislative body for the province, decides matters of business and policy, and supervises and controls provincial administration.<sup>25</sup>

Among the functions especially named in the law as belonging to the provincial assembly are the following:

- To express its views upon drafts of laws affecting the provinces, and on other matters, at the request of the state ministry;
- To represent the province in its self-administering capacity; and to deliberate and make decisions in regard to provincial affairs; likewise in regard to any other matters which are or may be assigned to it by law or ordinance;
- To make statutory enactments and other regulations;
- To decide upon the apportionment of state taxes to be levied by the province, when this is not prescribed by law;
- To pass upon expenditures which are necessary either for the fulfilment of obligations or for the good of the province, including:
  1. The application of moneys transferred from the state treasury;
  2. The application of the income from capital property and real estate belonging to the province, and the application of the capital property itself;
  3. The raising of loans and the acceptance of securities;
  4. The levying of provincial taxes;

<sup>24</sup> Throughout this chapter the words assembly, committee, and director, will be used to denote, respectively, the popularly elected representative organ, the collegial administrative body, and the individual head of administration. The German nomenclature varies so greatly, not only from state to state, but from one unit of government to the next, that it is confusing to follow. Moreover, there are no exact equivalents in English for many German expressions, except such clumsy circumlocutions as "assembly of selectmen of the city" for "Stadtverordnetenversammlung." A simple and uniform nomenclature in English has the further advantage of displaying the great similarity between the systems of local government in the German states.

<sup>25</sup> Prov. Code, Sections 9-33, as amended, particularly by election law of October 7, 1925.



- To authorize the alienation of real estate and immovable property. If the value is slight, this right may be transferred to the provincial committee, for special branches of administration;
- To vote the provincial budget and to decide questions of accounting, treasury management, and reporting;
- To establish the fundamental principles for provincial administration;
- To make regulations concerning provincial officers, and to elect the provincial director, his staff, and the heads of various branches of administration, as established by provincial enactment;
- To elect the members of the provincial committee, and of authorities and commissions which special laws may require for purposes of general state administration; also to appoint any special commissions or commissioners for provincial administration;
- To make motions and complaints to the state government, regarding matters which affect the province or portions thereof;
- To fulfil any other functions assigned to it by law.<sup>26</sup>

*The Provincial Committee.* The provincial committee is the administrative organ of the province. It consists of a chairman and a number of members varying from seven to thirteen. The provincial assembly elects the chairman and the other members, and elects one of the latter to the vice-chairmanship. The provincial director is *ex officio* a member of the provincial committee; he may not serve as chairman.

The following functions are assigned to the provincial committee:

- To prepare and to execute the decisions of the provincial assembly, unless some special agency is charged with this duty in particular cases;
- To administer the affairs of the province, especially its property and institutions, according to the regulations set forth in laws, legal ordinances, statutory enactments of the provincial assembly, and the plans of the provincial budget;
- To appoint provincial officers (insofar as this is not done by the provincial assembly), and to direct and supervise their work;
- To give advice on all matters referred to it for this purpose by the state ministry or the over-president (the chief agent of the ministry within the province).<sup>27</sup>

<sup>26</sup> *Ibid.*, Sections 34-44.

<sup>27</sup> *Ibid.*, Sections 45-61.

The law on state administration of July 30, 1883, bestows upon the provincial committee the right to elect five of the seven members of the provincial council.<sup>28</sup>

*The Provincial Director.* The provincial director carries on the current business of the province as a self-administering local unit.<sup>29</sup> He is elected by the provincial assembly, but is actually appointed by the state ministry.<sup>30</sup> He prepares and executes the decisions of the provincial committee, and exercises his functions under its supervision. He is the official superior of all other persons in the service of the province. He represents the province in its external relations, deals in the name of the province with public authorities and private persons, manages the official correspondence, and signs documents. Any documents which lay obligations upon the province, after their substance has been decided upon by the provincial assembly or committee as the case may be, must be signed by the provincial director and by two members of the provincial committee, and stamped with the official seal of the provincial director. The provincial director may consult the counties, communes, and other local units, upon matters of general provincial administration.

*Other Officers of the Province.* The provincial assembly may decide to associate other officers of high rank with the provincial director to manage special branches of administration or special institutions. In this case a statutory enactment of the province must specify which of the functions ordinarily performed by the provincial director are transferred to the individual officers insofar as their own sphere of operations is concerned.<sup>31</sup>

Offices connected with the various bureaus, the treasury service, the provincial institutions, and the provincial highway service, are regulated in certain respects in connection with the voting of the

<sup>28</sup> Section 10. For the functions of the provincial council as an organ of state administration, see the preceding chapter.

<sup>29</sup> On the conception of current business as matters of routine which need not be decided by the provincial committee, see Cuno, *Verwaltungsrecht und Verwaltungspraxis*, Heft IV, pp. 450, 451.

<sup>30</sup> If the ministry refuses to accept the choice of the provincial assembly, it votes on the matter again. If the second choice is unacceptable to the ministry, the ministry of the interior may appoint a commission to act until a person acceptable to it is elected. *Prov. Code*, Section 87.

<sup>31</sup> *Prov. Code*, Sections 87-93.

provincial budget. Various regulations, of which some are fixed by law and some are made by the provincial organs, govern the appointment and management of these officers.<sup>32</sup>

Special commissions or commissioners may be established for particular affairs. The provincial assembly decides upon the nature and functions of these agencies, and may either select their members or leave this duty to the provincial committee. The latter organ instructs and supervises the special agencies.<sup>33</sup>

Members of the provincial assembly, of the provincial committee, and of special provincial commissions receive no compensation except a bare recompense for their actual expenses.<sup>34</sup>

*Provincial Finance.* All anticipated income and expenditures of the province for one or more years, as the case may be, are listed in the provincial budget, which is prepared by the provincial committee and voted by the provincial assembly. When the committee lays the budget before the assembly, it must also report upon provincial administration and the general condition of provincial affairs. Both the committee and the provincial director must act in accordance with the budgetary plans. Provincial treasury certificates covering both income and outlay are authorized by the director. Any expenditures beyond the sums granted in the budget, or for other purposes than those provided, may be made only upon the responsibility of the provincial committee, and must receive the consent of the provincial assembly. Within four months after the close of the fiscal year, the annual accounts of the provincial treasury and of the treasuries of individual provincial institutions must be sent in to the provincial committee. The committee reviews all accounts, and sends them, together with its own comments, to the provincial assembly, which examines and verifies them, and votes on the question of discharging those responsible.<sup>35</sup>

The provincial assembly authorizes the levying of provincial taxes, according to conditions fixed by law.<sup>36</sup>

*State Supervision Over the Province.* Even in its self-administrative capacity, the province is subject to a considerable degree of

<sup>32</sup> *Ibid.*, Sections 94, 95. For disciplinary regulations and further information as to these provincial officers, see Sections 96-98.

<sup>33</sup> *Ibid.*, Section 99.

<sup>34</sup> *Ibid.*, Section 100.

<sup>35</sup> *Ibid.*, Section 104.

<sup>36</sup> *Ibid.*, Sections 105 ff., with later amendments.

state supervision. This is exercised by the over-president, and by the minister of the interior as higher instance. The object of state supervision is, "to see that the administration is conducted in accordance with the provisions of law and in an orderly manner." The supervisory authorities may demand information on any administrative matter, and may examine all documents, particularly financial plans and records of every kind. The over-president or his authorized representative may participate in the discussions of the provincial committee and of all provincial commissions. Decisions made by these agencies or by the provincial assembly, which are in excess of their powers or in violation of law, are suspended by the over-president (either with or without directions to this effect from the minister of the interior). A statement of reasons must accompany the order of suspension. Complaint against such order lies to the superior administrative court.<sup>37</sup>

The decisions of the provincial assembly concerning several matters specified in the law, such as the obtaining of loans and the regulation of charitable institutions, require the consent of the central state authorities. Compulsory expenditures which have been omitted from the budget estimates of the province may be inserted therein by the over-president; compulsory extraordinary grants may be established by him. Complaint may be made to the superior administrative court.<sup>38</sup>

A decree of the state ministry may dissolve the provincial assembly. In this case a new election must be held within three months, and the new assembly must convene not later than six months following the dissolution.<sup>39</sup>

*The Administrative District.* The administrative district, as was explained in the preceding chapter, is a subdivision of the province in Prussia, which is established for purposes of state administration. It is not a self-governing local unit. The administrative president of the district and the district committee do, however, possess certain supervisory powers over county finance,<sup>40</sup> municipal administration,<sup>41</sup> etc.

<sup>37</sup> *Ibid.*, Sections 114-18.

<sup>38</sup> *Ibid.*, Sections 119-21.

<sup>39</sup> *Ibid.*, Section 122.

<sup>40</sup> Kreisordnung of March 19, 1881, Sections 127-29.

<sup>41</sup> See Zuständigkeitsgesetz of August 1, 1883 (GS. p. 237), Sections 2, 4, 5, *et passim*.

*Counties.* The counties in Prussia are governed by several different county codes,<sup>42</sup> only one of which will be discussed here. This is the code, originally established in 1872 and greatly amended in 1881, which governs the counties of six provinces.<sup>43</sup> The other codes resemble it so closely that except for minor details its provisions are standard for the counties of Prussia.

According to this code, each county is a communal association for the administration of its own affairs, with the rights of a corporation. A city with a population of more than 25,000 is authorized to separate from the county organization and to organize as an urban county (Stadtkreis). Under special conditions smaller cities may do the same. The formal declaration of this status is made by the minister of the interior, upon the motion of the city.<sup>44</sup>

The organs of the county are the county assembly (Kreistag), the county committee (Kreisausschuss), and the county director (Landrat).

The county assembly<sup>45</sup> is a popularly elected body of twenty members or more, according to population. In addition to the elected members, the county director is *ex officio* chairman. Its functions are sub-legislative and controlling. In general it is charged with the duty of discussing and deciding county affairs, and such other matters as are or may be legally assigned to it. A considerable list of special functions is given in the law, including the voting of expenditures for the fulfilment of an obligation or in the interests of the county, the establishment of the county budget, the authorization of county offices, and the election of members of the county committee.<sup>46</sup>

<sup>42</sup> Kreisordnung für Hannover vom 6 Mai 1884 (GS. p. 181); Hesse-Nassau, vom 7 Juni 1885 (GS. p. 193); Westfalen vom 31 Juli, 1886 (GS. p. 217); Rheinprovinz vom Mai 30, 1887 (GS. p. 209); Schleswig-Holstein vom 26 Mai 1888 (GS. p. 139); Hohenzollern Land, Amts- und Landesordnung vom 2 April, 1873, changed through Gesetz vom 2 Juli, 1900 (GS. p. 228). The most important, and the one which will be used here is Kreisordnung vom 13 Dec., 1872, and 19 März, 1881, for the eastern provinces of East and West Prussia, Brandenburg, Pomerania, Silesia, and Saxony.

<sup>43</sup> Revised edition as of March 19, 1881 (GS. p. 179). This Kreisordnung will be referred to in the following pages as KO.

<sup>44</sup> KO. Sections 1-4.

<sup>45</sup> KO. Sections 84-114, as amended, especially by the election law of December 3, 1920 (GS. 1921, p. 1).

<sup>46</sup> KO. Section 115 ff.

The county committee consists of the county director as *ex officio* chairman, and six members elected by the county assembly. Its functions are, in general, "the administration of county affairs and the care of matters of general state administration."<sup>47</sup> It carries out such decisions of the county assembly as are not to be executed by other agencies, administers county affairs according to laws and other legal norms, including the budget specifications, appoints and supervises county officers, administers state affairs that are assigned to it, and gives its advice upon all matters referred to it by the state authorities.<sup>48</sup> Special administrative and supervisory commissions and commissioners may be appointed by the county assembly for special purposes, such as the management of county institutions; even these, however, are under the superior direction of the county director.<sup>49</sup>

The county director is appointed by the state ministry.<sup>50</sup> Like the county committee, he is both a state organ and a local organ. He conducts affairs of general state administration within the county, serves as chairman of the county assembly and of the county committee, and directs the county administration. He also supervises police administration within the county and its subdivisions. He manages the routine business in connection with the administrative functions of the county committee; he may, however, assign the independent administration of an individual function to another member of the committee.<sup>51</sup>

The county committee prepares the annual budget, which is established by vote of the county assembly. A copy of the budget, and of the report presented by the county committee in connection with the budget estimates, must be sent to the district administrative president. The chairman of the county assembly must examine the accounts of the county treasury regularly at least once in each month. At least once a year he and another member of the committee must make a special inspection. Within four months

<sup>47</sup> KO. Sections 130, 131.

<sup>48</sup> KO. Sections 130, 134.

<sup>49</sup> KO. Section 167.

<sup>50</sup> The county assembly may nominate persons for this office, and in general its nominations will be accepted, but they are not binding upon the ministry. KO. Section 74; Verordnung of February 18, 1919 (GS. p. 23); Cuno, IV, p. 416.

<sup>51</sup> KO. Sections 74-76.

after the close of the fiscal year, all accounts of the county treasury are to be laid before the county committee, which reviews them and presents them, accompanied by its own notes and comments, to the county assembly. The assembly examines them (through a special agency, if it so desires), and if they are satisfactory it accepts them and votes to discharge those responsible. A copy of the vote of acceptance is to be sent immediately to the district administrative president.

*Supervision Over the County Administration.* State supervision over the administration of rural counties is exercised in the first instance by the administrative president of the district, and in the higher and final instance (except in so far as the law assigns it elsewhere) by the over-president of the province. The district committee also possesses certain supervisory powers. Supervision over the administration of the urban counties is the same as that exercised over the cities. This is also exercised by the district president and the over-president, with the coöperation, in some matters, of the district committee and of the provincial council.<sup>52</sup>

This supervision includes:

- Giving consent to certain kinds of resolutions of the county; <sup>53</sup>
- The right to demand information, to require the submission of documents, especially the budget and the annual accounts, and to require local examinations of the business and financial affairs of the county; <sup>54</sup>
- The right of objection to violations of law or acts in excess of power by county authorities; <sup>55</sup>
- The right of the state ministry to dissolve the county assembly; <sup>56</sup>
- The exercise of certain powers of compulsion when the county fails to fulfil obligatory functions; <sup>57</sup> and
- The compulsory insertion of items into the budget. <sup>58</sup>

*City Government.* Like the other governmental units in Prussia, the cities are governed by several different laws rather than by one

<sup>52</sup> KO. Section 176 ff.; Zuständigkeitsgesetz (GS. 1883, p. 237) Sections 2-23.

<sup>53</sup> KO. Section 176.

<sup>54</sup> KO. Section 177a.

<sup>55</sup> KO. Section 178.

<sup>56</sup> KO. Section 179.

<sup>57</sup> Landesverwaltungsgesetz, Section 132.

<sup>58</sup> KO. Section 180.

uniform code applicable to all. Serious endeavors have been made to pass a new municipal code, but these have been unsuccessful to date. The most salient features of the present municipal code for the eastern provinces<sup>59</sup> are, however, typical for nearly all such codes in Prussia, and remain unchanged in all drafts of a future code.

Cities are self-governing public-law corporations. The typical form of organization is the magisterial system. Under this system the representative organ is the city assembly (*Stadtverordnetenversammlung*), the administrative organ is the magistracy (*Magistrat*), and the official head of administration is the mayor (*Bürgermeister*). The city assembly consists of eleven or more members, but not more than one hundred at highest, who are elected by popular vote.<sup>60</sup> It selects its own chairman. The assembly passes upon all municipal affairs which are not reserved to the magistracy, and controls the administration.<sup>61</sup> The consent of supervisory authorities is required to certain decisions of the city assembly, particularly to those which arrange for loans to the city or which alienate real estate.<sup>62</sup> The taxing power of the city assembly is confined to certain kinds of taxes, and to the amounts actually needed for municipal purposes. In specified cases the consent of the state supervisory authorities is required.<sup>63</sup> A curious feature of the code is the requirement that decisions of the city assembly upon matters which are to be executed by the magistracy require the consent of the latter.<sup>64</sup>

The magistracy consists of the mayor, his associate or substitute, who may bear the title of second mayor, a varying number of

<sup>59</sup> *Städteordnung* of May 30, 1853 (GS. p. 261), with later amendments. See Helfritz, *Grundriss des preussischen Kommunalrechts*, for a list of laws now applicable to the cities of the different provinces; Lympius (p. 36 ff.) also gives a list.

<sup>60</sup> See GS. 1923, p. 83; GS. 1924, p. 99; also *Städteordnung*, Sections 12 ff., as amended by the above laws.

<sup>61</sup> *Städteordnung*, Sections 35, 37, 38.

<sup>62</sup> *Ibid.*, Sections 50, 51.

<sup>63</sup> *Ibid.* See national *Finanzausgleichgesetz*, RGBL. 1926, I, p. 203 ff., as amended by law of April 9, 1927; also chapter VII. For cases where consent of superior authorities is required, see Prussian *Kommunalabgabengesetz* of July 14, 1893, Sections 8, 9, 55, 57, as amended by law of May 13, 1918, article 5, Nos. 2, 3, 4, 8.

<sup>64</sup> *Ibid.*, Section 36.



aldermen (Schöffen), and any expert or technical officers who may be needed.<sup>65</sup> All members of the magistracy are elected by the city assembly, whose choices must be ratified by the district administrative president or, according to circumstances, by other supervisory authorities.<sup>66</sup>

The functions of the magistracy are primarily administrative. It must execute the laws and ordinances and carry out those decisions of the city assembly with which it is in accord; but must withhold its consent from any decisions which it considers *ultra vires*, illegal, or opposed to the welfare of the state or the interests of the city. When the magistracy refuses to consent to a decision of the city assembly, it must inform the latter body of its reasons. If no agreement can be reached through the activities of a joint committee, the district administration is asked to decide the matter. In no case can the city assembly execute its own decision.<sup>67</sup>

Among other functions of the magistracy which are particularly named in the law are the following: The administration of city institutions, or the supervision of any which may be placed under separate management; the administration or supervision of local financial matters and of city property; the appointment and supervision of the civil servants of the municipality; and the levying and collecting of city taxes.<sup>68</sup>

The mayor is the director and supervisor of the whole of municipal administration. He possesses certain powers of appointment and of discipline. Any matters of local or state administration, which are to be carried out by the city and which are not assigned to other authorities, are handled by him.<sup>69</sup> In this sense he may be considered an officer of the state as well as the locality, particularly since he performs such state functions as controlling the local police and acting as public attorney.<sup>70</sup>

The municipal budget is prepared annually by the magistracy. It is displayed for public examination during eight days before it is

<sup>65</sup> *Ibid.*, Section 29.

<sup>66</sup> *Ibid.*, Section 33, as amended. See also Zuständigkeitsgesetz (GS. 1883, p. 237), Section 13.

<sup>67</sup> *Ibid.*, Sections 56, 36.

<sup>68</sup> *Ibid.*, Section 56.

<sup>69</sup> *Ibid.*, Sections 58-63. See also Zuständigkeitsgesetz (GS. 1883, p. 237), Sections 20, 27.

<sup>70</sup> *Ibid.*, Section 62. On this point see Matthias, p. 114; James, Herman, p. 140.

passed by the assembly. An open meeting of the assembly must be held, before discussion of the budget is commenced. At this meeting the magistracy makes a full report upon the administration of local affairs, and their present condition.<sup>71</sup>

Budget accounts and reports are submitted to the magistracy, which reviews them and presents them, with its comments and notes, to the assembly for examination and discharge. Copies of the budget and of the reports are sent to the supervisory authorities.<sup>72</sup>

*The Mayoralty Form of City Government.* Cities of not more than 2500 may adopt a simplified form of government in which the collegial administrative body is replaced by a mayor, and the number of elected assemblymen is reduced to six. The mayor acts as chairman of the assembly, with voting right; with him are associated two or three aldermen who assist him, and act as his substitutes upon occasion.<sup>73</sup>

Under this form of government, all rights and duties which would otherwise devolve upon the magistracy are placed upon the mayor, with certain modifications due to his position as chairman and voting member of the assembly. In particular, his consent is not required to decisions made by the assembly. Most of the other provisions which hold for the magisterial form of municipal government apply also to the mayoralty form.<sup>74</sup>

*State Supervision Over Cities.* Except where some other authority is established, state supervision over cities is exercised by the district administration, and in higher instances by the over-president and the state minister of the interior. If the supervisory authorities consider that a decision of the city assembly is in excess of its powers, contrary to law, or injurious to the welfare of the state, they may and shall require a temporary suspension of execution of such decision, on the part of the magistracy or the mayor. The

<sup>71</sup> Städteordnung, Sections 61, 66. By special vote the budget may cover a longer period than one year, but not more than three years.

<sup>72</sup> *Ibid.*, Sections 66-71.

<sup>73</sup> Städteordnung, Section 72. In Westphalia any city can choose the mayoralty form; in the Rhine province it is the normal form. For discussion of the principal differences in the municipal codes of the various provinces, see de Grais, pp. 135, 136.

<sup>74</sup> *Ibid.*, Section 73.

latter shall notify the city assembly, and shall immediately request the district administration to decide the point at issue.<sup>75</sup>

The district administration or the administrative president may compel the insertion into the budget of obligatory items, or the granting of required sums.<sup>76</sup> The state ministry may dissolve the city assembly.

*Functional Associations.* A law of 1911 permits cities, rural municipalities, rural counties, and other local units to form functional associations (Zweckverbände) for special purposes.<sup>77</sup> The establishment of such associations depends fundamentally upon the will of the parties, but in case the over-president deems the creation of such an authority essential to the public welfare, it can be established even against the will of the governmental units concerned. In such a case the sphere of their operations extends only to such functions as are obligatory upon all the participating governmental units.<sup>78</sup>

The legal relationships of the members of the associations are established through contract.<sup>79</sup> The affairs of these associations are carried on by a committee selected from the governmental units which participate in the undertaking.<sup>80</sup> A director chosen by the committee acts as its chairman and executive authority.<sup>81</sup> State supervision is exercised, according to the composition of a given association, by the county or district committee.<sup>82</sup>

*The Rural Commune.* Of the numerous laws governing rural communes in various parts of Prussia, that which is applicable to the most territory, and which may be considered typical, is the code for the eastern provinces of July 3, 1891.<sup>83</sup>

<sup>75</sup> *Ibid.*, Sections 76, 77.

<sup>76</sup> *Ibid.*, Section 78. Zuständigkeitsgesetz, Section 19.

<sup>77</sup> Very similar provisions are found in the law of 1891 on rural communes (GS. p. 233 ff.), Sections 128-38.

<sup>78</sup> Zweckverbandsgesetz of July 19, 1911 (Gesetz Sammlung, p. 115), Sections 1 and 2.

<sup>79</sup> *Ibid.*, Sections 9, 10. The contract must be ratified by the county or district committee.

<sup>80</sup> *Ibid.*, Sections 11-13.

<sup>81</sup> *Ibid.*, Sections 15, 16.

<sup>82</sup> *Ibid.*, Sections 21-24.

<sup>83</sup> Landgemeindeordnung für die sieben östlichen Provinzen, GS. 1891, p. 233 ff. For a list of other laws on the organization of rural communes, see Cuno, p. 382.

Rural communes constitute corporations of public law. In every commune containing more than forty voters, a representative organ is established, which is called the common council (*Gemeindevertretung*). The council consists of the communal director (*Gemeindevorsteher*), from two to six aldermen, and popularly elected members sufficient to make the entire council number from six to 144. Smaller communes may, and upon the demand of the county committee must, establish a common council;<sup>84</sup> otherwise their decisions are made at a sort of town meeting or assembly of voters.<sup>85</sup>

It is the duty of the common council to decide all local affairs which are not assigned by law to the communal director, and to supervise local administration, but under no circumstances to attempt direct administration. The consent of the supervisory authorities is required to certain decisions of the council, especially those involving the securing of loans, the alienation of real estate, etc.<sup>86</sup>

The communal director is the chief administrator of the rural commune. The aldermen are associated with him in the work of administration. Both the director and the aldermen are elected by the common council, and formally appointed by the county director.<sup>87</sup> The communal director is chairman of the common council, and possesses a vote therein. He is to carry out laws, ordinances, instructions from his superior authorities, and the decisions of the common council (except when the last-named appear to him in excess of power, illegal, or opposed to the general welfare or general interest, in which case he must suspend them and ask the supervisory authorities to decide the point). He has considerable powers of financial supervision; he appoints and supervises such local officers as the common council may decide to establish; and he has charge of apportioning and collecting local taxes. He is the local agent for police administration; several other related functions are bestowed upon him.<sup>88</sup>

The preparation of the annual budget<sup>89</sup> is a function of the communal director. The estimates are displayed to the public for two

<sup>84</sup> *Ibid.*, Sections 5, 49, 74; GS. 1919, p. 13 ff., Section 5.

<sup>85</sup> *Ibid.*, Section 40 ff.

<sup>86</sup> *Ibid.*, Sections 102, 103, 114.

<sup>87</sup> *Ibid.*, Sections 74, 75, 84.

<sup>88</sup> *Ibid.*, Sections 88, 90, 91, 140.

<sup>89</sup> For exceptions and modifications, see *ibid.*, Section 119.

weeks before the budget is voted by the common council. A copy of the budget as finally passed is sent to the chairman of the county committee. After the close of the fiscal year, budgetary accounts are submitted by the communal director to the common council for review and discharge. The reports are opened to the public, and a copy of the vote of acceptance is sent to the chairman of the county committee.<sup>90</sup>

State supervision over rural communes is carried out by the county director as chairman of the county committee, and in higher and final instance by the district administrative president. Certain supervisory functions, as has been seen already, are given to the county and the district committees. Orders to suspend a decision of the common council, whether these come from the communal director or from the county director, are contestable in administrative procedure. Disciplinary action against the communal director and the aldermen may be taken, according to circumstances, by the county director or the district administrative president. Complaints against such action lie to the administrative courts.<sup>91</sup>

**Bavaria.** The system of local government in Bavaria has undergone many alterations in the last few years. On October 17, 1927, new municipal, district and county codes were passed by the legislature.<sup>92</sup>

*The County.* The county is a public law corporation with the right of self-government in accordance with the laws. Its territory is the same as that of the governmental district for the carrying on of state functions.<sup>93</sup>

Like the commune and the district, the county itself is the repository of general classes of functions rather than specific authorizations.

The county is obliged to carry out the following functions:

- I. To establish, maintain and manage the medical, charitable, blind and dumb institutions necessary for the county.

<sup>90</sup> *Ibid.*, Sections 119, 120.

<sup>91</sup> *Ibid.*, Sections 139-45.

<sup>92</sup> Municipal Code, Gemeindeordnung (referred to as GO.), Gesetz- und Verordnungs-Blatt, 1927, p. 293. District Code, Bezirksordnung (referred to as Bez O.), *ibid.*, p. 325. County Code, Kreisordnung (referred to as Kr O.), *ibid.*, p. 335.

<sup>93</sup> Kr O., Article 1.

2. To maintain the institutions, particularly the educational institutions, whose maintenance has been or may be undertaken by the county.
3. To provide for the expenses of the establishments, undertakings, and institutions of the state, which the county has agreed to support or which have been assigned to it by this law, as well as expenses which the county may undertake for such purposes in the future.
4. To fulfil the functions which are assigned to it by other laws, or which may be assigned to it in the future.
5. To pay its personal and necessary expenses, in so far as they are not borne by the state or otherwise.

The county is authorized, when the fulfilment of its obligatory functions is secured, to make voluntary grants to those institutions, undertakings and establishments, whose maintenance by the communes and districts within the county is impossible or extremely difficult, or for which such grants are required because of the special conditions of the governmental district.<sup>44</sup>

The county is administered by the county assembly and the county committee, except where the state administrative body, the "county government," is authorized to act. The business of the county is administered free of charge by the county government in accordance with the decisions of the county assembly and the county committee. In addition to executing these decisions the county government supervises the orderly management of the institutions, undertakings, and establishments of the county, without injury, however, to the supervisory right of the county assembly and the county committee. If the county is concerned in an administrative conflict which the county government has to decide, the county committee shall appoint a special representative. The same is true when the county lays before the administrative court of justice a complaint against an order of the state or expert supervisory authorities.

The business connected with the maintenance and repair of the existing county buildings is managed free of charge upon the demand of the county. How far and under what conditions the business connected with new buildings will be cared for by the state, will be determined in individual cases by the state minister of the interior in agreement with the state minister of finance.

<sup>44</sup> Kr O. Articles 2, 3.

The treasury and accounting affairs of the county are carried on free of charge by the county government, according to the instructions of the appropriate state ministers.

If the county government considers that a decision of the county assembly or the county committee is contrary to law or requires the consent of the state supervisory authorities, it must refuse execution and lay the affair before the state supervisory authorities.

The county government prepares the business of the county assembly and the county committee, and places proposals before it, including financial plans. A decision must be made upon these proposals. The right of the county assembly and the county committee to discuss and decide upon affairs of its own volition, remains undisturbed by this provision.

In urgent cases the county government is authorized to act, if the calling together of the county committee is impossible and if the president of the county assembly (in case of his inability, his representative) has given consent. The county committee is to be informed at its next sitting of any measures taken.

The county is represented in legal affairs by the county government, in other affairs by the president of the county assembly.<sup>65</sup>

*The County Assembly.* The members of the county assembly are elected by universal, equal, direct, and secret suffrage, according to the principles of proportional representation, for a term of five years. The number of members elected is twice that of the county's representatives in the state assembly. In addition, members to a number equal to one-fourth of those elected, but not more than ten at the highest, are to be chosen by the political groups according to the proportions of their votes in the whole county.

The president of the county government calls the first session of a newly elected county assembly and opens the session. Under his chairmanship the assembly elects its own president and secretary for the term, and a substitute for each.<sup>66</sup>

*The County Committee.* The county committee consists of the president and the secretary of the county assembly, and five to seven members of the same, with alternates. These are all elected on a basis of proportional representation by the assembly itself for the duration of its term.

<sup>65</sup> Kr O. Articles 4-7.

<sup>66</sup> Kr O. Articles 8, 9, 17.

The county committee has to prepare the discussions of the county assembly and to hold preliminary discussions upon estimates. The county committee decides finally in regard to money expenditures and the making of contracts of all sorts in the administration of the institutions, undertakings, establishments, and other property of the county, if in the estimates the decision in individual cases is reserved to the county committee, or if the estimates are exceeded and the matter is urgent.

The county committee is authorized to supervise the accounting of the foundations established for the governmental district or for several governmental districts, which are not administered by a religious body. The county committee can offer suggestions respecting the administration of such foundations, in order to safeguard the interests of the county.

The county committee is convened by the president of the county assembly in agreement with the county government. It must be called together upon the written request of three members, for the consideration of a specified matter or upon the demand of the county government.

The county government has the right to summon officers to the sittings of the county committee. Such officers must be allowed to speak, upon their request. The county committee can demand that representatives of the county government participate in the sittings. The order of the day of the county committee is to be communicated to the county government at least three days before the sitting. Other subjects cannot be taken up unless the county administration has been advised beforehand.\*

The following affairs are reserved for the decision of the county assembly:

1. The settlement of proposals.
2. The verification of the annual accounts for the administration of the county and the foundations administered by the county.
3. The laying down of principles according to which the property of the county is to be administered.
4. The levying of the public taxes for the county.
5. The making and altering of rules for institutions and other establishments of the county, and the fixing of fees and other charges for their use.

\* Kr O. Articles 18-21.



6. The alienation and burdening of property which belongs to the real estate of the county or of the foundations administered by the county.
7. The creation or abolition of institutions, undertakings, and establishments of the county.
8. Borrowing money and accepting securities.
9. Voluntary grants in accordance with Article 3 of this law.
10. The height of the compensation of members of the county assembly, the county committee, and the special committees, as well as the nature and the amount of compensation for the costs of travel.

The county assembly can determine that for the settlement of specific affairs the decision of the county committee is sufficient. The county assembly itself must decide all matters which require supervisory consent, except certain burdens upon real estate. In some other matters the county committee decides finally, if the case is urgent and the immediate convening of the county assembly is not possible. The decision is to be communicated to the county assembly at its next sitting.<sup>98</sup>

*Special Committees.* The county assembly can establish special committees to handle particular affairs, and, subject to certain reservations, it can transfer to them the powers of the county committee and the county assembly. The provisions in regard to the county committee are valid for these committees. The number of members is determined by the county assembly.<sup>99</sup>

*State Supervision.* State supervision over the county is exercised by the state minister of the interior.

The state supervisory authorities can change or repeal decisions contrary to law and can compel the fulfilling of legal obligations and duties undertaken by the county.

The state supervisory authorities can inspect the establishments and institutions of the county, examine the business and treasury administration, and demand reports and documents.

In case the county refuses to alter or repeal decisions contrary to law, within a given period, the supervisory authorities change them or repeal them. If within a fixed time the county contests an obligation, or makes no declaration, or refuses to fulfil an obli-

<sup>98</sup> Kr O. Article 24.

<sup>99</sup> Kr O. Article 27.

gation even though not contesting it, the state supervisory authorities decide the matter. Under these circumstances the state supervisory authorities may issue provisional orders.

For the fulfilment of functions that have been finally established as binding upon the county, or for the execution of provisional orders, the state supervisory authorities instead of the county can place the necessary sums in the estimates, issue any necessary orders, and make legally binding declarations.

A complaint is permitted against decisions of the supervisory authorities in specified cases, if the county thinks that a decision injures its legal right of local self-government or lays upon it a burden not legally established. This complaint is brought before the administrative court of judicature within four weeks. Against provisional orders or against orders for the execution of duties, a complaint is not permitted.<sup>1</sup>

The county must have the consent of the state supervisory authorities for the following affairs:

1. For the investment or application of moneys in a way deviating from the provisions given for the commune.
2. For the establishment and operation of income-producing enterprises, or considerable participation in such.
3. For the burdening of real estate with encumbrances, real estate mortgages, or liabilities on income, except sums remaining due on the purchase price.
4. For the alienation or essential alteration of buildings and other movable or immovable property of great age, whose maintenance on account of historical, scientific, or antiquarian value is important to the public; for the alienation or essential alteration of landscapes worthy of protection, and for all measures in respect to the county property, which essentially change an urban or rural view worthy of protection.

The state minister of the interior can extend and develop the provisions concerning the application of communal property, for county property.<sup>2</sup>

*Officers and Employees.* Persons in the service of the county, especially in the county institutions, undertakings, and establishments, stand in a service relationship of public legal nature, in

<sup>1</sup>Kr O. Articles 34, 36.

<sup>2</sup>Kr O. Article 36; in respect to No. 2, also Gem. O. Article 61, paragraph IV.

accordance with the provisions of the state law of officers. The property rights claims arising out of this service relationship, as well as claims in respect to surviving dependents, are applicable against the county. The county committee is to be heard before the appointment and promotion of an officer, his retirement with income as of the waiting list, or his retirement with pension; also before an officer subject to revocation is removed from office.

The settlement, the dissolution, and the execution of service contracts of civil law belong to the county government. Before they are settled or dissolved, the county committee is to be heard. The county government supervises the officers and other staff of the institutions, undertakings, and establishments of the county. It also imposes disciplinary penalties after hearings. The president of the county assembly is to be informed when a disciplinary process is commenced and decided.<sup>3</sup>

*Ad hoc* authorities for the carrying on of particular functions are permitted to the county, in accordance with the provisions governing the communes.<sup>4</sup>

*The District.* The district is the next administrative unit below the county. It is a corporation of public law, with the right of self-government in accordance with the laws. Its extent is identical with that of the administrative district for state government.<sup>5</sup>

The principal duties of the district are as follows:

1. The maintenance of the institutions, undertakings, and establishments, as well as the streets and bridges of the district.
2. The taking over and the construction of roads adapted to the facilitation of traffic between neighboring communes.
3. The establishment and maintenance of the necessary markings and warnings on the streets and bridges of the district.
4. The establishment of district hospitals if these are needed.
5. The provision of the expenses for institutions, enterprises, and establishments of the state, which the district has agreed to undertake or which are at present borne by it, or which it may undertake in the future.
6. The appointment of a district inspector of buildings and a district treasurer.
7. The provision for the cost of education of midwives, in so far as these costs are not otherwise covered.

<sup>3</sup> Kr O. Article 38.

<sup>4</sup> Kr O. Article 43.

<sup>5</sup> Bez O. Article 1.

8. The provision and maintenance, for the common use, of the necessary large fire fighting equipment.
9. The fulfilment of the functions which are laid upon it by other laws or which may be laid upon it in the future.
10. Provision for its personal and actual expenses, in so far as they are not met by the state or otherwise.

If the obligatory functions are provided for, the district may make voluntary grants to undertakings and institutions, the support of which by individual communes of the district is impossible or extremely difficult.<sup>a</sup>

*District Administration.* The district is administered by the district assembly and the district committee, except for the matters assigned to the district office.

The business of the district is managed by the district office, in accordance with the decisions of the district assembly and the district committee. The management of business is an official function of the district office as a state administrative authority. It includes the execution of the decisions of the district council and the district committee, and supervision over the orderly operation of the institutions, undertakings, and establishments of the district, without injury to the supervisory rights of the district council and the district committee. If the district is involved in an administrative conflict, which the district office has to decide, the district committee has to appoint a special representative. The same is true when the district lodges a complaint against an order of the state or technical supervisory authority.

If the district office believes that a decision of the district assembly or the district committee is contrary to law or requires the consent of the supervisory authority, it has to postpone execution and lay the matter before the state supervisory authority.

The district office prepares the matters which are to be discussed by the district assembly and the district committee, receives their suggestions, and presents to them its proposals. It lays before them a draft of the financial estimates. Definite decisions must be made in respect to its proposals. The right of the district assembly and the district committee to discuss and to decide matters of their own volition remains undisturbed.

<sup>a</sup> Bez O. Articles 2, 3.

In case of necessity, the district office can act on individual matters when the immediate calling of the district committee is impossible. The district committee is to be informed at its next sitting of any measures that have been taken.<sup>7</sup>

*The District Assembly.* The members of the district assembly are elected for five years, by universal, equal, direct, and secret suffrage, in accordance with the principles of proportional representation. One member of the assembly is elected for each one thousand (in the Pfalz, two thousand) inhabitants of the district, but not more than forty-five members are to be elected in all.

The district assembly decides the following matters :

1. The establishment of financial estimates.
2. The verification of the annual accounting in respect to the administration of the district and the foundations administered by the district.
3. The establishment of the principles, according to which the property of the district is to be administered.
4. The collection of the public taxes for the district.
5. The establishment of tax increases for special purposes, under conditions fixed by this law.
6. The making and changing of regulations for the institutions and other establishments of the district, the fixing of fees and other compensation for their use.
7. The sale and burdening of the real estate which belongs to the district or to the foundations administered by it.
8. The creation or abolition of institutions, undertakings, and establishments of the district.
9. The receiving of loans and the acceptance of securities.
10. Voluntary grants.
11. The rate of compensation of the members of the district assembly, the district committee, and special committees, as well as the nature and the rate of compensation for costs of travel.
12. The number, the salary, and other conditions of appointment of officers and employees of the district.

The district assembly can decide that for the settling of particular affairs, the decision of the district council is sufficient. But the full assembly must decide all matters which require the consent of the state authorities, with certain exceptions.

In urgent cases the district committee can decide upon certain specified matters contained in the above list, if the immediate

<sup>7</sup> Bez O. Articles 4-6.

calling of the district assembly is impossible. The decision, however, must be reported to the latter body at its next sitting.<sup>8</sup>

*The District Committee.* The district committee consists of the president of the district assembly, and enough other members, elected by the assembly from its midst, to make five or seven in all, as the assembly may decide.

This committee prepares matters of discussion for the district assembly and discusses the financial estimates in advance. The district committee decides conclusively upon the following affairs:

1. Expenditures and the incurring of obligations of all sorts in the administration of the institutions, undertakings, and establishments and the other property of the district, when the financial estimates have reserved decision in individual cases to the district committee, or when the estimates are exceeded and an emergency has arisen.
2. The establishment of certain special assessments.
3. The appointment and dismissal of the officers and employees of the district.

The district committee can be called upon by the district office, for its advice in respect to important questions of state administration.<sup>9</sup>

*State Supervision.* The county government exercises state supervision over the district, under the direction of the state minister of the interior.

The state supervisory authorities can alter or revoke decisions which are contrary to law and can compel the district to fulfil its duties. They can also inspect the institutions and establishments of the district, examine the business and accounting procedure, and demand reports and documents. The methods of supervision are the same as in the county. Complaints in respect to state supervision may be made, according to circumstances, either to the administrative court of judicature or to the state minister of the interior.

The district requires the consent of the state supervisory authorities for practically the same classes of affairs as the county and the commune—unusual applications of moneys, the burdening of

<sup>8</sup> Bez O. Articles 7, 8, 21.

<sup>9</sup> Bez O. Articles 16, 17.

real property with mortgages, essential changes in beautiful landscapes or interesting antiquities, and the like.<sup>10</sup>

*The Commune.* Communes are corporations of public law, with the right of self-government in accordance with the laws.

Changes can be made in communes, and other localities or separated bits of territory, either upon agreement of all concerned or when the county government establishes a pressing public need for the same. The changes are made by the state minister of the interior, or by the county government upon his authorization. In case several counties are concerned, the state minister of the interior specifies the county government which shall have charge of the matter.<sup>11</sup>

The willing or sub-legislative body of the commune is the municipal assembly, which consists of the first Bürgermeister and from five to fifty honorary members, according to the size of the commune. The municipal assembly can provide for one or two additional Bürgermeisters, who have the rights and duties of members of the assembly. Only communes with more than three thousand inhabitants can provide for a professional Bürgermeister. In such communes the assembly can decide to elect one or more professional members, who have the right to vote only in respect to their own departments of administration.

The municipal assembly represents the commune and administers its affairs. This should be noted as an important difference from the Prussian system, where there is a separate administrative body.

The first Bürgermeister directs and divides up the business. He has the chairmanship in the assembly, prepares business for its meetings, executes its decision, and represents the commune in respect to third persons. He has the power to issue emergency orders in his own right, and to settle business which cannot be postponed; but he must inform the assembly of such acts at its next sitting. He may carry on simple affairs of current administration, and attend to any business which need not be discussed in the assembly. He may object to decisions of the assembly which he considers illegal, and refrain from executing them until the decision of the supervisory authorities is obtained.

<sup>10</sup> Bez O. Articles 32-34.

<sup>11</sup> GO. Articles 1, 5.

The assembly may establish advisory committees, and in communes of more than three thousand inhabitants all important matters must be considered in the first place by such committees. Other committees with power to take final action may also be appointed, except for matters specified in the law as belonging to the full assembly. The assembly may pass upon the acts of these committees, and must do so when this is demanded by the first Bürgermeister or a third of the members of the committee. When such committees act as administrative courts, their decisions are subject to examination according to the provisions on administrative judicial procedure.

The powers of the communes are not given to authorities or agencies, but to the commune itself. These include:

1. The power to issue local by-laws when the laws expressly provide, or when the commune is authorized to establish provisions within the sphere of its functions.
2. The establishment and maintenance of boundaries and markings, of the necessary communal buildings, cemeteries and burial grounds, fire stations, and fire councils, and places for the disposal of dead animals.
3. The establishment and maintenance of communal roads, bridges, walks, and driveways. The maintenance and the cleaning of the local streets and parks; the establishment and maintenance of safety devices, signboards, and warnings.
4. The establishment and maintenance of the local notice boards and public clocks.
5. The establishment, maintenance, and sanitation of the arrangements for supplies of drinking water and for sewage disposal, which are not merely private; the maintenance and sanitation of other public water sources, aqueducts, and sewers.
6. The care of archives and records.
7. Furnishing the legislative and official publications prescribed by the minister of the interior.
8. Coöperation in the inspection of weights and measures by the district agent.

The communes are required to take over the management of affairs assigned to them by the state through law or ordinance, under the expert supervision of the appropriate state authorities. In the exercise of this supervision the supervisory authorities may make assignments, inspect the establishments and institutions of the commune, examine the business and treasury administrations, and



demand reports and documents. New functions can only be assigned to the communes by virtue of a law.

The commune is obliged to look after the local establishments of internal state administration, in so far as they are not entrusted to different authorities. Only by law, however, can the communes be obliged to coöperate in the other administration of the state, or in the administration of other public corporations. The state minister of education and religion can issue orders for the educational institutions of the commune.

The care for public peace, order, and safety, and the execution of the laws and other provisions respecting local police functions, is a duty of the commune in so far as the laws do not provide otherwise. The competent state authorities have the right to supervise the management of the local police functions, and to issue necessary instructions to the commune.

The local police provisions are issued by the municipal assembly in accordance with law. In other respects, however, the local police affairs, which are under the supervision of the district office, are controlled by the first Bürgermeister personally, or are conducted under his direction and responsibility by municipal officers.

For purposes of public safety, the state minister of the interior can order that the police power in the commune shall be exercised temporarily in whole or in part by state officers. The police officers of the commune are required to follow the orders of the state officers entrusted with the exercise of the police power. If there is danger from delay, the state authorities which supervise the commune can issue orders of like nature; they are required to submit them immediately to the decision of the state minister of the interior. In case this state control continues for more than one year, a statutory regulation is necessary.<sup>12</sup>

Communes must have the consent of the state supervisory authorities in the following cases:

1. For the investment or application of moneys in ways differing from those fixed by the law.
2. For the establishment of savings banks and other banks, and also for the establishment of new or the extension of existing branches of other receiving offices in other communes.
3. For the establishment and the conduct of gainful undertakings or for essential participation in such, as well as for establish-

<sup>12</sup> GO. Articles 13, 16, 17, 22, 26, 28, 50, 51, 52.

ments whose purpose is to supply the people with objects of daily need.

4. For the burdening of real estate with encumbrances, real estate mortgages, or liabilities on income, except sums remaining due on the purchase price.
5. For the alienation or essential alteration of buildings and other movable or immovable property of great age, whose maintenance on account of historical, scientific, or antiquarian value, is important to the public; for the alienation or essential alteration of landscapes worthy of protection, and, in so far as a commune immediately subordinate to the county is not concerned, for all measures in respect to communal property which essentially change an urban or rural view worthy of protection.
6. Except as regards a commune directly under the supervision of the county, for the exclusion, disposal, or destruction of important objects of the registers and archives.

The state minister of the interior can issue orders in respect to the conduct of establishments and undertakings mentioned in Number 2, above.

Consent is not required for the following matters:

Agricultural and forest undertakings, the piping of water, tramways, and other communication facilities, establishments for the production, distribution, and application of gas and electricity, public baths, public kitchens, and other institutions of a philanthropic nature, establishments for street cleaning and for the disposal of refuse, and slaughterhouses. The same is true for all subordinate establishments connected with these.<sup>13</sup>

The general supervision of service in respect to the communal officers rests with the first *Bürgermeister*. He can assign the service supervision, except over the professional members of the assembly, to the individual communal officers, but under his own responsibility. Complaints against the orders of the first *Bürgermeister* or against orders issued with his consent by those commissioned by him, are decided by the municipal assembly. Complaints of the professional members of the assembly against orders of the first *Bürgermeister* are decided finally by the state supervisory authority.<sup>14</sup>

Certain communes, instead of being under the control of the district office, are directly under the supervision of the county govern-

<sup>13</sup> GO. Article 61.

<sup>14</sup> GO. Article 101.

ment. The state minister of the interior may permit this upon the request of the communal council. As a rule this takes place only when the commune has at least ten thousand inhabitants.

As is common in German municipal law, *ad hoc* local authorities for the carrying on of particular purposes can be established. With the consent of the state minister of the interior, a commune can unite with other communes, districts, counties, and *ad hoc* authorities, as well as with other corporations of public law, for the fulfilling of individual functions.<sup>15</sup>

**Saxony.** We have already noted that for purposes of state administration, Saxony is divided into administrative circles and counties.<sup>16</sup>

*The County (District Union).* The counties are also organized as areas of self-administration, under the name of district unions. District unions are public law corporations. They are considered as local units in the sense that they must perform any functions which the national law assigns to communal associations.<sup>17</sup>

The particular task of the district unions appears to be welfare functions, as the law which establishes them gives them the following powers: <sup>18</sup>

- To establish institutions or take measures for purposes of poor relief, public care of the sick, public health, the development of building operations, improvement and maintenance of highways, fire prevention, flood control, and the prevention of general distress;
- To establish and maintain higher educational institutions and industrial technical schools, and other enterprises for public education and the mental and physical development of the young;
- To establish and administer district saving banks;
- To bestow extraordinary aid or credit for specific purposes, upon needy communes of the district;
- To support economic enterprises for the creation of new means of transportation within the district, or the improvement of existing ones; and
- To undertake such enterprises directly.

<sup>15</sup> GO. Articles 54, 133-141.

<sup>16</sup> See Chapter IX.

<sup>17</sup> *Gemeindeordnung für den Freistaat Sachsen*, new form embodying amendments, *Sächsisches Gesetz-blatt*, 1925, p. 136 ff., Sections 143, 145. This law will be cited hereafter as GO.

<sup>18</sup> GO. Section 147.

The legislative authority of the district union is the district assembly.<sup>19</sup> This body passes enactments within its competence, establishes the district budget, examines and approves the annual accounts, and supervises the administration of the district property and institutions. It elects persons to the district and circle committees, and establishes the salary, pensions, etc., of district officers, within the boundaries set by law. General service directions must be laid before it for its consent. It can make proposals to the state authorities in the interests of those living within the district. It may appoint committees or individual persons to undertake special district functions. It can determine in what manner obligations laid upon the district as a whole shall be borne or distributed, in so far as the law does not contain provisions covering this point. In general it acts upon resolutions formulated by the district committee.<sup>20</sup>

The district committee is an administrative organ, elected by the district assembly.<sup>21</sup> This committee has to prepare and lay before the district assembly the resolutions which it is to discuss, to carry out its decisions and those of its authorized committees, and to draw up the budget and the annual accounts. It has to administer any business of the district which is not reserved to the district council or its committees. The chairman of the committee (the county director) holds a position similar to that of mayor in a commune.<sup>22</sup>

The administration of property, financial affairs, and the budget, is conducted on the same principles in the district as in the commune. An annual budget is prepared by the district committee and voted by the district assembly. The budgetary reports are also prepared by the committee and passed by the assembly.<sup>23</sup>

State supervision is exercised over the district, in order to prevent it from performing acts in excess of its authority or contrary to law. The supervisory authority is in general the administrative

<sup>19</sup> GO. Sections 154, 155. For election of the district assembly, see Gesetz- und Verordnungsblatt, 1919, p. 145.

<sup>20</sup> GO. Section 157.

<sup>21</sup> Gesetz- und Verordnungsblatt, 1919, p. 145 ff., Section 7; GO. Section 157, No. 3.

<sup>22</sup> GO. Sections 157 (2), 158.

<sup>23</sup> GO. Sections 152, 9-11, 13-18.

circle, for some purposes the ministry of the interior.<sup>24</sup> Administrative remedies are available against acts of the state supervisory authorities.<sup>25</sup>

The ministry of the interior has the power to create new districts or alter the boundaries of those already existing, apparently without reference to county lines, but after hearing the district assemblies, the communes, and the circle committees. If a district desires to undertake other functions than those bestowed by law, the ministry of the interior, after hearing the higher administrative authority, may grant its request to this effect.<sup>26</sup> The enactments of the district assembly require the consent of the circle committee, subject to the decision of the Communal Chamber, a special administrative court located in Dresden.<sup>27</sup>

*The Commune.* Communes in Saxony are corporations of public law, possessing the right of local self-government.<sup>28</sup> The matters falling within the field of local self-government (subject to statutory modification) are, "the branches of communal administration whose function it is to meet the public needs of the local population," such as poor relief, public welfare, public health, the administration of local highways, the provision of markets, the regulation of business, fire protection, care for morals, etc. Within these limits the communes may exercise police power. In the administration of their own affairs the communes must take care that their economic relationships are properly managed, and that due regard is given to the general welfare and the rights of the Reich, the state, and other governmental units. The communes are required to administer the affairs assigned to them by the Reich, the state or other public authorities in accordance with the directions given to them by the competent authorities.<sup>29</sup>

Every commune must establish its charter along the lines laid down in the law. This charter and other local enactments require the consent of the higher authorities.<sup>30</sup>

<sup>24</sup> GO. Sections 170-76, 144, 147.

<sup>25</sup> GO. Sections 172-75.

<sup>26</sup> GO. Sections 144, 147, 151.

<sup>27</sup> GO. Sections 7 ff.

<sup>28</sup> Gemeindeordnung, Section 1 (Gesetzblatt, 1925, p. 136).

<sup>29</sup> *Ibid.*, Section 4.

<sup>30</sup> GO. Sections 6, 7.

The representative organ of the commune is a communal assembly with a membership of seven to seventy-five persons, as provided in the local charter.<sup>31</sup> Members of the communal assembly are popularly elected for a term of three years. The assembly makes decisions concerning all municipal affairs not assigned to some other authority, elects and supervises the directorate, acts upon the bills for local enactments which the directorate introduces, votes the annual budget, passes upon financial reports, etc. When the directorate is a corporation it must approve the acts of the common council. In case of disagreement, an administrative court decision is sought.<sup>32</sup>

The directorate is the executive organ of the commune. As a rule the mayor constitutes the directorate, but in large cities this organ may be a corporation consisting of a professionally trained mayor, his first deputy, and other professional or lay aldermen. Members of the directorate are elected by the communal assembly.<sup>33</sup>

It is the duty of the directorate to carry on the current administration of the commune under the supervision of the communal assembly. It administers municipal property, institutions, and taxes, and appoints and dismisses local officers, employees, and workers (sometimes with the coöperation of the communal assembly). It prepares and administers the annual budget.<sup>34</sup>

When the directorate considers that an enactment of the communal assembly is contrary to law, it must refuse to enforce this enactment. If the assembly is obdurate, the matter may be brought before the administrative court of first instance, with appeal to the Communal Chamber. The directorate may also object to decisions of the assembly, which it believes to be disadvantageous to the commune; the matter is decided in the same way. The costs of procedure before the administrative courts are borne by the commune if its enactment is held to be illegal; otherwise by the state.<sup>35</sup>

<sup>31</sup> GO. Sections 20-27. A town-meeting called by the mayor may take the place of the communal assembly in communes with fewer than one hundred citizens.

<sup>32</sup> GO. Sections 34 (2), 80.

<sup>33</sup> GO. Sections 69-82.

<sup>34</sup> GO. Section 83.

<sup>35</sup> GO. Sections 85-88.

The financial affairs and property administration of the commune are carefully regulated by law. The state ministry of the interior may issue orders affecting the management of communal forest property. The establishment of a municipal savings bank requires the consent of the same ministry. Receipts and expenditures are handled according to the budget, which is prepared by the directorate and voted by the communal assembly. After the close of each fiscal year all financial transactions must be accounted for. The final reports are presented by the directorate to the communal assembly, which votes upon their acceptance.<sup>36</sup>

The law provides in considerable detail for unions of communes,<sup>37</sup> and for functional associations or *ad hoc* authorities in which there may be a participation or representation of practically all parties interested, from the Reich to juristic persons.<sup>38</sup>

State supervision over the commune is practically the same as over the district.<sup>39</sup>

**Württemberg.** Württemberg is subdivided for purposes of both state and local administration into districts and communes. The county administrations which formerly existed here were abolished in 1924. Most of their functions were assigned to a division in the state ministry of the interior; the remainder were bestowed upon various appropriate authorities.<sup>40</sup> The only organs of self-government now existing in Württemberg are districts and communes.

*The District.* All communes in the state, except the city of Stuttgart, are grouped into districts. Each district is at the same time a unit of state administration, in which capacity it is called a bailiwick (Oberamtsbezirk), and a unit of local self-administration, bearing the designation of district corporation (Amtskörperschaft).<sup>41</sup>

It is the function of the district corporation to care for the general interests of both the communes and the citizens within its boundaries; also to administer independently, within the limita-

<sup>36</sup> GO. Sections 9-19, *et passim*.

<sup>37</sup> GO. Sections 130 ff.

<sup>38</sup> GO. Sections 160 ff.

<sup>39</sup> GO. Sections 170 ff.

<sup>40</sup> Regierungsblatt, 1923, p. 525; 1924, pp. 120, 173, 177, 180, 182, 213, 214, 218, 260, 261, 266, 330, 334, 358, 362, 475.

<sup>41</sup> Bezirksordnung of July 28, 1906, Regierungsblatt, p. 442.

tions established by law, the affairs entrusted to it. Through its representative assembly, a district corporation may make decisions having the force of law, in respect to the matters falling within its competence. Such decisions may be suspended or nullified by the higher administrative authorities, subject to administrative complaint brought by the district.<sup>42</sup>

Organs of local self-administration within the district are the district assembly (Amtsversammlung) and the district council (Bezirksrat). The latter is likewise an organ of state administration. The assembly consists of the district director (who also serves in the double capacity of state and local agent) as chairman, and twenty or thirty representatives of the communes belonging to the district.<sup>43</sup>

All district affairs which are not especially assigned by law to the district council or to district officers are administered by the district assembly. It appoints and dismisses district officers (although it may decide to bestow this function upon the council); its appointments are not subject to state ratification except when the law specifically requires this.<sup>44</sup>

The district council consists of the district director as chairman, and of six other persons, of whom three are elected by the district assembly from among its own members,<sup>45</sup> and the other three from non-members. The council is the executive and administrative organ of the district.<sup>46</sup>

The budget for the district is prepared annually by the director and voted by the assembly. Financial relationships and duties are carefully regulated by law. The assembly must appoint a special officer called the high treasurer (Oberamtspfleger), who has charge of treasury and accounting affairs, the collection of taxes for the district, etc. He supplies the financial information on which the director, with the help of the council, bases the budget plan; he also prepares the reports after the close of the fiscal year.<sup>47</sup>

General state supervision over both state and local administration within the district is carried on by a special ministerial divi-

<sup>42</sup> *Ibid.*, Articles 13, 14, 82, 86. See also *Regierungsblatt*, 1924, p. 173.

<sup>43</sup> *Ibid.*, Articles 6, 19, 25.

<sup>44</sup> *Ibid.*, Article 28.

<sup>45</sup> *Regierungsblatt*, 1924, p. 195.

<sup>46</sup> RBl. 1906, *Bezirksordnung*, p. 442 ff., Article 39.

<sup>47</sup> *Ibid.*, Articles 29, 68-78.



sion in the department of the interior. The particular purposes of this supervision over local administration are, to see that the district does not exceed its legal powers, that it does fulfil its legal duties, that all its acts are in accordance with law.<sup>48</sup> Methods of supervision include:

- Suspension of district ordinances;
- Nullification of district ordinances;
- The giving of consent to certain ordinances, such as those concerning:
  - The method of administering the treasury;
  - The sphere of the depositors, their rights and duties;
  - The minimum and maximum deposits;
  - The interest upon and the withdrawal of deposits;
  - The method of investing the property of the treasury;
  - The height of reserve funds;
  - The application of surplus;
  - The conditions for the dissolution of the treasury and the application of the property;<sup>49</sup>
- Matters in which an officer of the district is personally concerned;
- Certain salary and pension matters;
- Such financial questions as the alienation of real estate, grants beyond a certain amount, which were not authorized in the budget, loans, sinking funds, etc.; and
- Changes in the distribution of functions between district and communes.<sup>50</sup>

Special provisions exist in the law for the City District of Stuttgart.<sup>51</sup>

Several districts may unite for the establishment or maintenance of institutions for the poor or the sick, for industrial or agricultural education, for the common construction or maintenance of highways and other means of transportation, flood protection, etc. The administration of such associations is regulated by a common enactment passed by the assemblies of all the districts concerned, and consented to by the minister of the interior.<sup>52</sup> Conflicts between a district association and an individual member, or conflicts be-

<sup>48</sup> *Ibid.*, Articles 79, 81 (as amended in 1924, RBl. p. 173 ff., Section 7).

<sup>49</sup> *Ibid.*, Articles 15, 81-85.

<sup>50</sup> *Ibid.*, Articles 15, 85.

<sup>51</sup> *Ibid.*, Articles 89, 91.

<sup>52</sup> *Ibid.*, Article 92.

tween different districts, concerning the public rights and duties resulting from the united relationships, are decided in the administrative courts.<sup>53</sup> The decision to dissolve a district association requires for its validity the consent of the ministry.<sup>54</sup>

*Communal Self-Administration.* The communes, into which the entire territory of Württemberg is divided, are public law corporations. They fall into three main groups, namely: Large cities (50,000 or more); cities of medium size (10,000 to 50,000); and small towns and rural communes. The last named group is again divided into communes of the first class (4000 to 10,000), of the second class (1000 to 4000), and of the third class (not more than 1000).<sup>55</sup>

The communes administer their own affairs independently, within the limitations set by law; in particular, they manage their own property, care for the common interests of their citizens, and manage the local police. Communal enactments are subject to suspension by the district council, or to annulment by the minister of the interior. In such cases, appeal may be made by the commune, to the administrative courts.<sup>56</sup>

All communes, whether large or small, urban or rural, must establish a communal assembly. This is a collegiate body which consists of the communal director as chairman, and of popularly elected members varying in number from six to seventy-two, according to the size of the commune.<sup>57</sup>

The assembly has to handle all affairs of the commune as to which a decision is needed, unless they are expressly given over to the director by law. It protects the rights of the commune against abuses within and against interference from the outside, and represents the state authorities as against third persons. It appoints and dismisses the officers and employees of the commune, determines the range of salaries, decides concerning the division of functions, and supervises local administration. The appointment of the com-

<sup>53</sup> *Ibid.*, Article 93.

<sup>54</sup> *Ibid.*, Article 94.

<sup>55</sup> Gemeindeordnung of July 28, 1906, Regierungsblatt, p. 323 ff., Articles 1, 7.

<sup>56</sup> *Ibid.*, Articles 8, 195.

<sup>57</sup> *Ibid.*, Articles 9 ff., 71 ff., amended by Gesetz betr. das Gemeindewahlrecht und die Gemeindevertretung, RBl. 1919, p. 25 ff.

munal officers need not be ratified by state authorities except in the cases specified by law. The assembly votes the budget and administers the communal property. It administers the public institutions and establishments of the commune, and issues orders regulating their use, with the exception of police orders. It cares for the poor, participates in local police administration, coöperates in the administration of state functions, and supplies information or replies to questions, on demand of the state authorities.<sup>58</sup> The members of the communal assembly are not paid, except for a possible small sum to compensate them for loss of time, which is not required except in the larger cities. The performance of special functions by individual members of the assembly in the smaller or rural communes may involve a slight compensation; the larger cities may add to the assembly a number of salaried members not to exceed one-fourth part of the unsalaried members. The assembly itself elects these salaried members and assigns their fields of work.<sup>59</sup>

The communal director is popularly elected for a term of ten years.<sup>60</sup> The election requires the confirmation of the central authorities,<sup>61</sup> but this cannot be refused except under conditions specified in the law. Appeal may be taken to the ministry of the interior, if confirmation is not given. The communal director prepares the business of the assembly, calls it together, acts as chairman, directs the discussion, issues orders based on the decisions of the assembly, and in general executes these decisions.<sup>62</sup>

He directs and supervises the entire communal administration, particularly the management of the communal property; he handles personally all current business, or sees that it is cared for by other officers. He manages the local police according to the provisions of law, maintains public order, supervises the officers and employees of the commune, looks after the publication of laws and general orders, and cares for any local business of the general state and district administration which is not given over to other authorities.<sup>63</sup>

<sup>58</sup> Gemeindeordnung, *lex cit.*, Article 30.

<sup>59</sup> *Ibid.*, Articles 29, 86, 87.

<sup>60</sup> *Ibid.*, Article 55.

<sup>61</sup> *Ibid.*, Article 56, and Verordnung des Staatsministeriums betreffend die Überweisung der Geschäfte der Kreisregierungen an andere Behörden, of March 26, 1924, Section 6 (Regierungsblatt 1924, p. 173).

<sup>62</sup> Gemeindeordnung, Article 63.

<sup>63</sup> *Ibid.*, Articles 63, 163-66.

The financial affairs of communes are carefully regulated by the communal code. The annual budget is prepared by the communal director, with the coöperation of the treasurer,<sup>64</sup> and voted by the communal assembly. The supervisory authorities may object to certain items. The same thing is true in respect to the final reports on the receipts and expenditures of a fiscal year.<sup>65</sup> Administrative complaints may be made against these decisions.<sup>66</sup>

The supervision of the state over communes is generally exercised for cities above ten thousand by the special division of the ministry of the interior, for the administration of districts and corporate bodies; in a few cases directly by the minister. For the remaining communes, supervision is exercised by the district director, and in a few cases by the district council.<sup>67</sup>

The supervisory functions consist chiefly in seeing that the communes do not exceed their authority, that they fulfil the duties obligatory upon them, and that they observe the laws in administering communal affairs. The usual rights are granted to the supervisory authorities, to examine documents, offices, etc., and to demand the necessary information from the communal authorities.<sup>68</sup> Decisions or orders of the communal authorities which are contrary to law or general administrative provisions, may be set aside by the higher state authorities, in case they are not withdrawn by the communal authorities themselves within a specified time.<sup>69</sup> As we have already seen, the supervisory authorities may suspend or annul enactments of the common council.<sup>70</sup> Complaints against the decisions of supervisory authorities may be made to the higher administrative authorities in the proper sequence. Against the final decisions of the minister of the interior, legal complaint lies to the administrative court of justice.<sup>71</sup>

<sup>64</sup> On duties of the communal treasurer, *Ibid.*, Article 65.

<sup>65</sup> *Ibid.*, Articles 115-61, especially 123, 125, 137 in connection with the law of 1924 (RBl. p. 173). Section 6.

<sup>66</sup> *Ibid.*, Article 195.

<sup>67</sup> *Ibid.*, Article 185, as amended by Verordnung, betreffend die Überweisung der Geschäfte der Kreisregierungen an andere Behörden, RBl. 1924, p. 173, Section 6.

<sup>68</sup> Gemeindeordnung, *lex cit.*, Article 186.

<sup>69</sup> Gemeindeordnung, Article 187, as amended by the law of 1924 (RBl. p. 173 ff.), Section 6.

<sup>70</sup> Gemeindeordnung, Article 190, and law of 1924, Section 6.

<sup>71</sup> *Ibid.*, Article 195.

**Baden.** The units of local self-government in Baden are the county and the commune.<sup>72</sup>

The representative organ of the county is the county assembly, which consists of members elected in the districts for state administration within the county, and the members of the county committee.<sup>73</sup>

The county assembly is authorized "in the interests of the county and its inhabitants, to create establishments for public use, and to aid the communes in developing activities for the general culture, economic life, and welfare."<sup>74</sup> In addition to this general sphere of operations, the law gives the county assembly certain special functions, which include:

Highways;

The building and maintenance of bridges and canals;

The establishment of savings banks, schools, workhouses, orphans' homes, poorhouses, hospitals, and rescue homes;

The care of the poor;

The obtaining of loans; and

Making decisions concerning the income and expenditures of the county;

The county assembly has the right to make proposals or complaints to the state administration or state legislature, concerning affairs which are directly related to the functions of the county.<sup>75</sup>

The county committee is the executive organ of the county. It executes the decisions of the county assembly, looks after the county property, and administers the county institutions. It consists of five members and two substitutes, who are elected by the

<sup>72</sup> The basic law governing the organization of the internal administration is Gesetz, die Organisation der innern Verwaltung betreffend, of October 24, 1863, Regierungs-Blatt, p. 399 ff., which has been greatly amended by Gesetz, Das badische Verwaltungsgesetz betreffend, of March 28, 1919, and April 4, 1919, Gesetz- und Verordnungs-Blatt, p. 247 ff. The new communal code of 1921 is found in Gesetz- und Verordnungs-Blatt, 1921, pp. 347 ff. Amended, *ibid.*, 1922, p. 183. Special units devoted to the particular purposes of welfare and housing have recently been established. See Badisches GVBl. 1921, p. 331; 1923, pp. 267 and 315; 1924, p. 59; 1925, p. 161.

<sup>73</sup> GVBl. 1919, p. 247 ff., Article 3.

<sup>74</sup> Gesetz, die Organisation der innern Verwaltung betreffend, Section 41.

<sup>75</sup> *Ibid.*, Section 44.

county assembly for four-year terms. The committee elects its own chairman.<sup>76</sup>

State supervision over the county in its self-governing capacity is exercised in part by the chief agent of state administration within the county, the county director, and in part by the minister of the interior and other state authorities.<sup>77</sup> Administrative court remedies are provided.<sup>78</sup>

The communes in Baden are corporations of public law. "The function of the commune is to foster the intellectual, moral, physical and economic welfare of its inhabitants, and to educate them for a commonwealth of the people. As a member of the state administration, the commune has the further function, in accordance with national and state laws and ordinances issued upon the grounds of these laws, to coöperate in the general state administration."<sup>79</sup>

Local enactments may be passed by the communes in respect to those matters which the law assigns for regulation by this means; and any affairs of the commune, or any rights and duties of its citizens, as to which the law permits a variety of treatment or makes no express stipulations. They may not be promulgated, however, until the state supervisory authorities have examined them as to conformity with law, and have declared them unobjectionable. If objections are offered, the commune may appeal to the ministry of the interior and to the high administrative court.<sup>80</sup>

The police activities of the commune include the local administration of the public health regulations, streets, markets, regulation of business, care of poor, housing and building regulations, fire protection, care for public morals, and protection of safety and order within its own boundaries. In these activities, the commune exercises local police power. The minister of the interior may assign any of the above functions to a state authority, in which case the state bears the cost. In the administration of police func-

<sup>76</sup> *Ibid.*, Section 48; and Gesetz, Das badische Verwaltungsgesetz betreffend, GVBl. 1919, p. 247 ff., Article 4 for the term of members of this committee.

<sup>77</sup> Law of 1863, RBl. p. 399 ff., Sections 54, 55, 20-23.

<sup>78</sup> *Ibid.*, Sections 15-19.

<sup>79</sup> Gesetz einer badischen Gemeindeordnung, of October 5, 1921, Badisches Gesetz- und Verordnungs-Blatt, 1921, p. 347, Section 1.

<sup>80</sup> *Ibid.*, Section 6. See also Section 65 (4 and 5).

tions the communes are bound by the law and by the orders of state authorities. Police functions of the state administration may also be transferred to the commune.<sup>81</sup>

The representative body of the commune in Baden is called the common council (Bürgerausschuss). It is composed of the communal executive committee and of popularly elected assemblymen, from twenty-four to eighty-four in number. In the smaller communes a "town meeting" of all voters takes its place. It is not so much a legislative body as a consenting body, since it merely ratifies the decisions on certain communal affairs which are made by the executive committee. Some matters are handled by the committee alone or by the mayor alone.<sup>82</sup> The executive committee and the mayor may submit any decision of the committee for the consent of the common council, and in some cases the state supervisory authority may order such submission. Among the decisions which the law specifically requires to be submitted, are those affecting the following matters:<sup>83</sup>

- Changing the class of a commune;
- Issuing, amending or repealing the charter;
- Establishing new permanent official positions;
- Budgetary plans and reports;
- Taxation;
- The sale of property;
- The establishment of new communal establishments or institutions;
- The creation of loans; and
- Compensation of the members of the communal council.

The administrative body of the commune (and in a very real sense the deciding body on many matters) is the executive committee, which consists of the mayor and a number of honorary members (from six to twenty-four). The commune may appoint assistant mayors and paid expert heads of departments, in which case they will belong to the committee. The number of assistant mayors and members, both honorary and expert, is determined by local enactment. The mayor and all other members of the executive committee are elected by the common council.<sup>84</sup>

<sup>81</sup> *Ibid.*, Sections 7, 8.

<sup>82</sup> *Ibid.*, Sections 18, 35, 51, 52, 58, 65, 66.

<sup>83</sup> *Ibid.*, Section 65.

<sup>84</sup> *Ibid.*, Sections 18, 19, 21, 32.

The mayor controls or handles most of the active administration of the commune, subject to the consent or coöperation of the executive committee in most instances.<sup>85</sup> He acts as chairman of both the executive committee and the common council.<sup>86</sup> He prepares the enactments of the common council, of the executive committee, and of special committees, calls meetings of all these organs, brings up matters for consideration, formulates statements, and countersigns orders. With the coöperation of the executive committee, he distributes affairs among the assistant mayors and salaried members of the committee. He may take over certain branches of communal business for his own personal administration. As the official superior of all officers and employees of the commune, he has supervision over all services, and issues ordinances within the limits established by the legislative provisions and decisions of the executive committee. Upon occasion he cares for the publication of the laws and ordinances, and of special ordinances issued by state authorities. He executes the functions obligatory upon the commune, and assists in state administration here. All official orders for the commune are addressed to him. He administers the local police functions.<sup>87</sup>

State supervision over the communes is exercised by the state ministry in respect to cities, and by the authorities of the state administrative district (a unit smaller than the county) in respect to other communes. The object of state supervision is to see that the commune fulfils its obligatory functions, that it acts within the limits set by law, and that it observes legal provisions as to procedure. The supervisory authorities may not only demand information, but may also serve notice upon a commune that it must fulfil a certain obligation, repeal an illegal ordinance, refrain from an illegal act, or observe a requirement as to procedure. If the commune does not comply, the supervisory authorities may take direct action; for example, they may insert an item into the local budget. The commune may seek redress from the ministry of the interior or from the high administrative court.<sup>88</sup>

<sup>85</sup> *Ibid.*, Sections 42-44.

<sup>86</sup> *Ibid.*, Section 46.

<sup>87</sup> *Ibid.*, Sections 42, 43.

<sup>88</sup> *Ibid.*, Section 9.



**Hesse.** Hesse is divided into provinces and counties. Each of these constitutes an association for the self administration of its own affairs, possessing the rights of a corporation.<sup>80</sup>

*The Province.* The legislative authority for the province is the provincial assembly, which is composed of from thirty-five to fifty members,<sup>81</sup> elected for a six-year term.

The general functions of the provincial assembly are, to represent the province in its self-administering capacity, and to discuss and decide provincial affairs as well as other matters which are or may be assigned to it by laws or ordinances. Examples of its functions are given as follows: "<sup>82</sup>

- To make ordinances having the force of law ;
- To determine in what manner state obligations, which are to be collected by the province, and whose manner of collection is not prescribed through law, are to be apportioned ;
- To pass upon the expenditures that are obligatory upon the province ;
- To pass upon non-obligatory expenditures in the interest of the province or parts thereof ;
- To make certain financial decisions, create loans, and levy the county and provincial taxes ;
- To establish the treasury estimates and to examine and pass judgment upon the yearly accounting ;
- To establish principles governing the financial operations of the province ;
- To establish the service positions of the province, in so far as they are not provided for by law, and to make provisions for personnel ;
- To hold elections for the provincial committee, the commissions of general state administration, or the especial commissions and commissioners of the province ;
- To make proposals and give advice to the ministry, regarding the interests of one or more counties or the whole province ;
- To give advice concerning all affairs, in which this is requested by the state authorities ;

<sup>80</sup> Gesetz, betreffend die innere Verwaltung und die Vertretung der Kreise und der Provinzen, of July 8, 1911 (Regierungsblatt, p. 324 ff.). This is the fundamental law governing the counties and the provinces. A law of 1919 makes numerous amendments. Gesetz, die Abänderung der Kreis- und Provinzialordnung vom 8 July, 1911, betreffend (Regierungsblatt, 1919, p. 164 ff.).

<sup>81</sup> *Ibid.*, Article 68, as amended by the law of 1919, Regierungsblatt, 1919, p. 164 ff., No. 14.

<sup>82</sup> *Ibid.*, Article 74.

To decide concerning complaints as to election districts; and  
 In case an individual county is not able to carry out its functions,  
 the provincial assembly, after a hearing, may decide to extend  
 financial aid.

A provincial committee is established to administer the affairs of the province, and to handle affairs of general state administration in so far as the latter are assigned to it by laws or ordinances.<sup>92</sup>

The provincial committee consists of the provincial director and eight members. These members, as well as eight substitutes, are elected by the provincial assembly for a period of service coterminous with its own.<sup>93</sup>

The provincial committee has the following functions:

- It prepares and executes the decisions of the provincial assembly, in so far as these duties are not assigned to other commissions, commissioners, or officers;
- It administers the provincial affairs in accordance with law and the decisions of the provincial council, including the budgetary estimates;
- It appoints the employees of the province and directs and supervises them;
- It gives advice concerning all matters assigned to it for this purpose by state authorities;
- It carries out the business assigned to it by laws or ordinances, including matters of general state administration;<sup>94</sup>
- It acts in certain cases as an administrative court;<sup>95</sup> and
- It has to act upon national matters which are assigned to it by state executory provisions or taken over by it.<sup>96</sup>

The provincial director directs and supervises the business of the assembly and the committee, and looks after its prompt execution. He calls together both organs, and has the chairmanship in the same. He carries out the current business assigned to the committee, promulgates its decisions, and executes them. Appeals from his executory acts go to the provincial committee.<sup>97</sup>

<sup>92</sup> *Ibid.*, Article 80.

<sup>93</sup> *Ibid.*, Articles 81 and 82, as amended by the Law of 1919, *Regierungsblatt*, 1919, p. 178, Nos. 21 and 22.

<sup>94</sup> *Ibid.*, Article 83.

<sup>95</sup> *Ibid.*, Articles 84, 87.

<sup>96</sup> *Ibid.*, Article 84.

<sup>97</sup> *Ibid.*, Articles 76, 85, 86.

*Supervision Over County and Provincial Administration.* Decisions of the provincial assembly or of the county assembly require the consent of the state minister of the interior, if they concern the following matters:

- Statutory ordinances and the order of business procedure;
- The alienation of land and capital property of the province or county;
- The obtaining of loans, whereby the province or the county is burdened with new debts;
- The burdening of the county through county and provincial taxes for more than 25 per centum of the entire amount of direct state taxes; and
- A new burdening of the communes in the county, or of the county itself, without legislative authorization, in so far as the burdens continue for over five years.<sup>98</sup>

The supervision of the state over affairs of the provinces and the counties as units of self-administration, in so far as it is not expressly given to some other authority, is exercised by the minister of the interior.<sup>99</sup> Decisions which overstep the powers of the provincial assembly or the county assembly, or which are contrary to law, are contested by the provincial director or the county director.<sup>1</sup> Upon the proposal of the minister of the interior, a provincial assembly or a county assembly may be dissolved by an ordinance of the entire ministry.<sup>2</sup>

*The County.* For every county in Hesse there is a representative assembly of twenty-one to thirty members, depending upon the number of inhabitants. Members are elected for three years according to the principle of proportional representation.<sup>3</sup>

The county assembly represents the county, and discusses and decides the affairs of the county, as well as other matters which are or may be assigned to it by law or ordinance.<sup>4</sup> By way of enumeration or example, several specific functions are listed in the law. These include the following powers:

<sup>98</sup> *Ibid.*, Article 94.

<sup>99</sup> *Ibid.*, Article 95.

<sup>1</sup> *Ibid.*, Article 96.

<sup>2</sup> *Ibid.*, Article 97, as amended by law of 1919, Regierungsblatt, 178, No. 24.

<sup>3</sup> Gesetz, die Abänderung der Kreis- und Provinzialordnung (u. s. w.), Articles 14, 15.

<sup>4</sup> Gesetz, betreffend die innere Verwaltung und die Vertretung (u. s. w.), Article 30.

- To issue ordinances having the force of statutes ;
- To determine in what manner obligations which are to be collected by the county, and whose method of collection has not already been determined through law, are to be apportioned ;
- To vote expenditures to which the county is bound ;
- To vote non-obligatory expenditures in the interests of the county ;
- To make certain financial decisions, to obtain loans, and to levy county taxes ;
- To establish the estimates for the county treasury and to examine and pass judgment upon the yearly accounting ;
- To establish principles according to which the administration of the real estate and capital property belonging to the county, as well as the county establishments and institutions, is to be carried on ;
- To pass upon the creation of service positions of the county, in so far as these are not already prescribed through law ; to determine upon the number, the salary, etc., of the employees of the county ;
- To hold elections for the county committee and for the commissioners of general state administration, and to appoint special commissions and commissioners for county purposes ;
- To make proposals and give advice to the ministry on subjects which concern the interests of one or more communes of the county or the whole county ;
- To give advice concerning all affairs, which are assigned to it for this purpose by the state authorities ;
- To administer the affairs of the state poor unions, with the help of the county committees ;
- To give financial aid to such communes as show that they are unable to fulfil the functions obligatory upon them in the general interest ; and
- To carry on the other business assigned to them by laws or ordinances.<sup>5</sup>

*County Committee.* The county committee not only looks after the affairs of the county, but also the affairs of the general state administration, in so far as the latter are assigned to it by law.<sup>6</sup> It consists of the county director and six members, who are elected by the county assembly from among the inhabitants of the county, in accordance with the principles of proportional representation.<sup>7</sup>

<sup>5</sup> Gesetz, betreffend die innere Verwaltung und die Vertretung der Kreise und der Provinzen, Article 31, as amended by law of 1919, RBL. p. 164 (p. 175, No. 5).

<sup>6</sup> *Ibid.*, Article 44.

<sup>7</sup> Gesetz, die Abänderung der Kreis- und Provinzialordnung vom 8 Juli, 1911, betreffend, No. 9.

Half of the members must belong to the county assembly.

The county committee has the following functions:

To prepare and execute the decisions of the county assembly, in so far as other authorities are not especially assigned these functions;

To administer the affairs of the county in accordance with law and according to the decisions of the county assembly, and the plans of the budget;

To appoint the employees of the county and to direct and supervise them;

To give advice in regard to all affairs, which are assigned to it for this purpose by the state authorities;

To carry on the business assigned to it by law, as well as the business of general state administration assigned to it by law or ordinance;<sup>8</sup>

It also acts as an administrative court of the first instance; and

It has to give its consent, as a rule, to police ordinances of certain kinds, and certain other affairs.<sup>9</sup>

A county director (Kreisrat) directs and supervises the business of the committee and sees that this business is carried out efficiently. He calls the committee together and has the chairmanship with the full right of vote. He handles the current business of administration assigned to the committee, prepares the decisions of the committee, and sees that they are carried out. He represents the committee in respect to outsiders, deals with authorities and private persons in the name of the committee, signs documents, etc.<sup>10</sup>

For the direct administration and supervision of individual county institutions, or for the care of individual county affairs, the county assembly can appoint especial commissions and commissioners, who carry out their business under the direction of the county director.<sup>11</sup>

*The City.* Hesse has a special code for cities and another for rural communes.<sup>12</sup>

<sup>8</sup> Gesetz, betr. die innere Verwaltung (u. s. w.), Article 47.

<sup>9</sup> *Ibid.*, Article 48.

<sup>10</sup> *Ibid.*, Article 53.

<sup>11</sup> *Ibid.*, Article 61.

<sup>12</sup> Gesetz, die Städteordnung betreffend, of July 8, 1911, Regierungsblatt, p. 367 ff., as amended by Gesetz, die Abänderung der Städteordnung vom 8 Juli, 1911, betreffend, of April 15, 1919, Regierungsblatt, 1919, p. 137 ff.: Gesetz, die Landgemeindeordnung betreffend, of July 8, 1911, Regierungsblatt, 1911, p. 443 ff., as amended by Gesetz, die Abänderung der Landgemeindeordnung vom 8 Juli, 1911, betreffend, of April 15, 1911, Regierungsblatt, 1919, p. 150 ff.

The code for cities provides that every urban commune constitutes an association for local self-government, with the rights of a public-law corporation. Any commune of more than 15,000 may organize as an urban commune under this code. Smaller communes of more than 3,000 may do so, subject to special conditions, including the permission of the state cabinet.

The administration of city affairs is in the hands of the mayor, who is assisted by the city assembly (*Stadtverordnetenversammlung*). The city assembly includes the mayor and his associates, as well as other members. The number of ordinary assemblymen varies with the size of the city from eighteen to sixty according to law, but the number may be changed by the city charter. The assemblymen are elected according to the principle of proportional representation.<sup>13</sup> The mayor (who is known in the larger cities as the head mayor) and at least two associates, one or more of whom may also bear a title such as assistant mayor, are elected by the assembly from among its members.

The city assembly has to make decisions as to all municipal affairs, in so far as they are not expressly assigned to the mayor or to a special deputation (a kind of standing committee). The assembly may consider other than municipal affairs only when they are especially assigned to it by law or by the state supervisory authorities.<sup>14</sup> It may decide, subject to legal limitations, as to the use of city property and the investment of the communal capital. The assembly may in no case administer municipal affairs; it supervises and controls the mayor and the other administrative agents. It advises on matters assigned to it for this purpose by the supervisory authorities.<sup>15</sup>

The consent of the supervisory authorities is required in respect to several matters, chiefly financial, which are decided by the city assembly. Some exceptions are made in respect to larger cities. When the consent is not given, an administrative conflict procedure lies to the provincial committee.<sup>16</sup>

If the city assembly has made a decision, which in the opinion of the mayor goes beyond its powers, or is contrary to law, it is his

<sup>13</sup> Gesetz, über die Wahlen der Stadtverordneten u. s. w., Article 1 (*Regierungsblatt*), 1922, p. 245.

<sup>14</sup> *Städteordnung*, Article 92.

<sup>15</sup> *Ibid.*, Articles 93, 94, 99.

<sup>16</sup> *Ibid.*, Article 95. See also Article 96.

duty to refuse to carry it out. If the assembly holds to the decision, the mayor must have the county council bring the matter in conflict procedure before the administrative court, which is the provincial committee.<sup>17</sup> Any interested person may bring a complaint against the decisions of the city assembly in administrative contest procedure before the provincial committee.<sup>18</sup>

The mayor is the responsible director of the entire city administration, and is also the chairman of the city assembly. After a hearing of the city assembly, he divides the work of the individual branches of municipal administration among himself and his assistants. The assistants, who are the representatives of the mayor, care for the official business assigned to them or oversee individual branches of the city administration. The mayor, under his own responsibility, may commission city officers with the preparation or the settling of certain affairs.<sup>19</sup>

Beside the special duties assigned to him by law, the mayor has the following functions:

- The local business of general state administration, particularly that of the local police administration, in so far as it is not given to special authorities;
- The execution of laws, ordinances, and the orders of the supervisory authorities;
- The preparation and execution of the decisions of the city assembly;
- The administration of the city institutions, or supervision of their administration by special agencies;
- The direction of the current administration of city property, the allocation of income and expenditures according to the plans and the supervision of the accounting and treasury systems;
- The administration of municipal property;
- The nomination and appointment of the city officers, according to the decisions of the city council;
- The care of municipal records and documents; and
- To guard the rights of the city, to represent it outwardly, and to deal in its name with authorities and third persons.<sup>20</sup>

*The City Budget.* The mayor prepares the annual budget,<sup>21</sup> which must contain estimates of (1) income from every source;

<sup>17</sup> *Ibid.*, Article 97.

<sup>18</sup> *Ibid.*, Article 98.

<sup>19</sup> *Ibid.*, Article 117.

<sup>20</sup> *Ibid.*, Article 121. See also Article 122.

<sup>21</sup> *Ibid.*, Articles 161-230. The provisions for the financial administration of the city are extremely interesting, but too detailed for presentation here.

(2) outlay, including an emergency allowance; and (3) plans for raising means to meet expenses. The city council votes the budget. A copy of the budget and the minutes of the discussion, also a record of increased items with a record of the vote of the city council, must be sent to the county council. Increases are contestable before the provincial committee as administrative court of first instance. The general execution of the budget is a function of the mayor. Special provisions are made in the municipal code for emergency expenditures, etc. At the close of the fiscal year all accounts are presented to the mayor, who reports them to the city council. The council reviews and votes upon them.

The municipal code also provides for the establishment of a magisterial form of city government, for communes which have at least 15,000 inhabitants. This can be done upon the proposal of the city assembly, with the consent of the minister of the interior.<sup>22</sup> The magistracy consists of the mayor, his associates, and a number of salaried and unsalaried councillors. The magistracy and the city assembly together constitute the deciding body of the city, and in general the magistracy enters into the position of the mayor. The city assembly has a position much like that which it enjoys in the regular form of city government.<sup>23</sup>

*State Supervision of City Administration.* The state supervision has for its purpose to see that the laws and ordinances are obeyed, that the city does not overstep its authority, that the real estate of the city is conserved, that there shall be no unnecessary burdening of the commune with debt, and that sinking funds shall be properly established.<sup>24</sup> The supervisory organs are the county council in the first instance, and the minister of the interior in the higher instance.<sup>25</sup> The county council may demand information at any time, in regard to:

The financial situation of the city;

The fulfilment of its duties; and

The way in which the municipal organs are carrying on their functions.

<sup>22</sup> *Ibid.*, Article 202.

<sup>23</sup> *Ibid.*, Articles 202-30.

<sup>24</sup> *Ibid.*, Article 231.

<sup>25</sup> *Ibid.*, Article 232.



The county council may also compel the fulfilment of duty by the municipal executory organs. If it considers a decision of the city assembly to be contrary to law or in excess of authority, it may issue a temporary order restraining the mayor from carrying out the decision. The city assembly may revoke the contested decision, or the matter may be brought before the administrative court (the provincial committee).<sup>26</sup>

In case the city assembly objects to an expenditure in the public interest which is laid upon the city by the county authorities, it is to be decided in administrative conflict procedure, whether and to what extent the expenditure should be made. In case the conditions of the necessity of the expenditure are governed by law, the decision has only to do with the extent of the expenditure.<sup>27</sup>

*The Rural Commune.* The rural commune in Hesse is a self-administering body with the rights of a public-law corporation. Communal affairs are conducted by the mayor with the coöperation of his associates and of the city assembly. The mayor is the chief officer of the commune. The city assembly, including the mayor and his associates, is a representative body. According to the size of the commune, the assembly consists of from twelve to twenty-one members, elected upon the principle of proportional representation for a period of three years.<sup>28</sup>

The assembly has to pass upon all affairs of the rural commune which are not expressly given over to the mayor or to special deputations. It may discuss other affairs only when they are especially assigned to it by law or in individual cases by the state supervisory authority.<sup>29</sup>

The assembly decides concerning the use of communal property and the investment of communal capital. It has no direct administrative functions, but it supervises administration by the mayor and other agencies.<sup>30</sup>

Before the assembly may take action in several affairs, the consent of the county council is necessary. This applies particularly in respect to communal real estate, the undertaking of certain obligations and contracts, and agreements in respect to water, power,

<sup>26</sup> *Ibid.*, Articles 232, 233.

<sup>27</sup> *Ibid.*, Article 234.

<sup>28</sup> Landgemeindeordnung, Articles 1-3. Law of July 8, 1919, Nos. 1 and 9.

<sup>29</sup> Landgemeindeordnung, *lex cit.*, Article 91.

<sup>30</sup> *Ibid.*, Articles 93, 94.

light, heat, transportation, or trade. In case the necessary consent is not received, the case is decided in the administrative court in conflict procedure. The assembly must give its advice on matters referred to it for this purpose by the supervisory authorities.<sup>31</sup>

The mayor is required to refuse to execute a decision of the assembly, under the same conditions set in case of an urban commune. In general, decisions of the assembly may be contested within a period of four weeks, by means of the formal complaint in administrative conflict procedure.<sup>32</sup>

The assembly holds sittings, as often as the mayor believes it necessary, or upon the demand of one-third of the members. Regular sittings may be established. The mayor or his representative has the chairmanship of the assembly, opens and closes the sittings, directs the business and maintains order.<sup>33</sup>

*State Supervision of Rural Communes.* State supervision is directed to seeing that the laws and other legal provisions are observed, that the powers of the communal government or its organs are not exceeded, that communal property is conserved, that unjustifiable burdening of the commune with debts is not permitted, and that the sinking funds for debts are properly managed. The county director acts as the first instance in this control, and the minister of the interior as the higher instance. The county director is authorized to demand information concerning the property relationships of the commune, the fulfilling of its obligations, and the carrying on of business by the communal organs. He is further empowered to hold the communal administration to the fulfilling of its duties. If the communal assembly has issued a decision which oversteps its authority, or which is illegal or contrary to law, the county director is required to request the mayor to temporarily set aside the measure. The mayor has to inform the assembly regarding this matter, and to bring the subject up for further discussion in the assembly. The mayor informs the county director of the results. In case the communal assembly persists partly or wholly in maintaining the contested decision, the case is brought before the administrative courts in conflict procedure. The assembly is represented in such a case by the mayor.<sup>34</sup>

<sup>31</sup> *Ibid.*, Articles 95, 96, 99.

<sup>32</sup> *Ibid.*, Articles 97, 98.

<sup>33</sup> *Ibid.*, Articles 100-03.

<sup>34</sup> *Ibid.*, Articles 206 ff.

In case the assembly refuses to insert in its budget estimates certain expenditures whose necessity and amount is determined through law or ordinance, or which are laid upon the commune by a legal decision of the county assembly or of the provincial assembly, or by a judicial decision, or by a legal decision of other authorities, the county assembly may order, against the will of the commune, that these items be inserted; or in case of pressing public necessity, it may order performance at the cost of the commune. This procedure may, however, be contested in the administrative court, the provincial committee. In case the communal assembly refuses to make decisions or take actions necessary to carry out a legally binding provision, the county director shall order the necessary steps to be taken and shall require the mayor to execute them.<sup>25</sup>

Practically the same supervision is exercised over unions of communes for particular purposes.<sup>26</sup>

✓ **Relationship of State Administration to Local Self-Government.** The relationship under the German system between the administration of state functions by state agencies in a local subdivision, and self-government within the same subdivision in respect to its own functions and by means of its own organs, is quite complex. The separation of state and local functions, and of state and local agencies, is by no means complete, nor is it intended to be so. On the contrary, what may be called a working integration is achieved.

Thus, the mayor of a commune is the local agent of the state, as well as the chief executive of communal functions. The county committee in Prussia consists of six members chosen by the representative organ of local self-government, the county assembly; with an *ex officio* chairman, the county director, who is nominated by the county assembly and appointed by the state ministry. He is also chairman of the county assembly. Both the county director and the county committee are definitely organs of the state and also organs of the self-governing county; and the chairmanship of the director in the assembly integrates state and local administration even further.

The interrelationships in the provinces of Prussia are even more complicated. Here there seems at first sight to be a fairly clear

<sup>25</sup> *Ibid.*, Articles 209 ff.

<sup>26</sup> *Ibid.*, Article 215.

separation of organs. The popularly elected provincial assembly is the willing organ of the province in its self-governing capacity; the provincial committee, elected by the assembly, is the administrative organ; and the provincial director, elected by the assembly, is the personal head of provincial self-administration. The head of state administration is the over-president, who is assisted by the provincial council. This statement of the case, however, is far too simple. It must be added that, in the first place, the provincial director, though elected by the assembly, is actually confirmed by the state ministry. He is an *ex officio* member of the provincial committee, so that a line of influence is thus established directly from the state ministry to the self-administration of the province. On the other hand, the province has a direct influence over state administration within its boundaries, since the provincial committee elects five members of the state organ, the provincial council—a large majority, for the only other members are the over-president, who acts as chairman, and one person appointed by the state ministry of the interior. The reciprocal play of influences between state and local organs is a very important feature of the administrative system of Prussia.

The same thing is true in the other states, although the organization is usually somewhat less complex. The county in Saxony, for example, has a popularly elected assembly for purposes of local self-government, a county committee elected by the assembly, which is both a state and a local organ, a county directorate which is primarily a state organ, and a county director who is the official head of both state and local administration.

Throughout the systems of all the states, there is a similar organic interrelationship. When to this is added the supervision exercised by the state administrative authorities in the larger local units, and over both state and local administrative authorities in the smaller ones, together with all the remedies provided in administrative tribunals, it will be seen that uniformity, economy, honesty, and efficiency of administration, with a minimum of friction, duplicated effort, and corruption, may be expected as the result.

Whether the machinery is too complex, too cumbersome, for a maximum of economy and efficiency, is another question. If this is so—and many careful thinkers believe it to be so—the fault lies less with the interrelationship between state and local administrative

agencies, than with the large number of hierarchical subdivisions in some states, which may be considered a burden rather than a necessity under modern conditions of rapid transportation and communication, and with the small size and correspondingly large number of units of the same rank, whereas fewer but larger units would be better adapted to the present day.

**Summary and Conclusions.** For the purpose of local government the states of Germany are divided into several classes of districts. In the smaller states, these are generally two, the county and the commune. In the larger states there may be three (or even more) divisions. The names of all these units vary a good deal from state to state.

The units of local government are quite numerous, and therefore small in area. They are arranged as a rule in a sort of hierarchy, with each smaller and lower unit controlled in certain respects by all the larger and higher units within whose geographical boundaries it lies.

The legal basis for local government is not only extremely wide but also very complex. It consists of national constitutional provisions, national laws and ordinances dealing with local government, state constitutional provisions, state codes, laws and ordinances governing the subject, municipal charters, laws governing localities, provisions issued by local legislative authorities, and prescriptive rights and customs. There is no national code organizing local government. As a rule each separate kind of local unit within each state is governed by a special code. In the case of Prussia there are a multitude of codes, not only one for each division of government, but also one for each division of government in each of several provinces, or groups of provinces.

It should be emphasized again, that there are two distinct systems of government existing side by side in the local units; namely, the local administration of state functions by officers and authorities directly responsible to the state, and the so-called local self-government. In many cases the same officers and organs are at one and the same time both state and local authorities. The state authorities of the higher territorial subdivisions usually act as administrative courts or controlling authorities for both state and local agencies in the lower divisions.

The position of the local governmental units in respect to the nation is quite different from the position of similar units in the United States, as the Reich may and does exercise a good deal of direct as well as indirect control over them. Certain provisions of the national Constitution affect local units, particularly those requiring proportional representation, providing for a law of officers uniform for all public bodies, prescribing voting qualifications, and giving to the Reich large powers over functions which would affect localities. The local governments are bound, moreover, to carry out functions assigned directly to them by the Reich, or national functions assigned to them by the superior state authorities. It happens very often that all the local authorities of the state are engaged in carrying out a national law, in some capacity or other.<sup>27</sup> The possibilities of this relationship usually are very great, especially in a time of emergency. Thus, in case some unexpected turn of events should render immediate action necessary, the Reichstag could pass the appropriate law without any loss of time or energy in deciding upon the necessary machinery, knowing that within a few days every governmental body in Germany would be assisting in carrying out the law, under the control of a completely trained and completely responsible hierarchy of administrative and administrative court authorities. The local authorities, therefore, may be regarded as in a sense a part of the national administrative machine.

The national Constitution and also most of the state constitutions guarantee to localities the right of local self-government. The rights of localities under these provisions and under the various laws which regulate self-government, however, are somewhat narrowly restricted in certain respects. State supervision of local activities is always provided. The form of local government is usually prescribed by a state code, which may permit minor deviations in specific instances. The municipalities often have the right to frame their own charters according to principles laid down in considerable detail by the code. The state prescribes the nature of local organs, their relations to one another, their powers, and their responsibil-

<sup>27</sup> As one example out of many, may be cited the provision of the national evaluation law of August 10, 1925 (RGBI. p. 214), Section 1, par. (2). "The states and communes, which levy taxes on the basis of the value of individual kinds of property, must base these taxes upon the value established according to the provisions of this law."

ities. In all cases the local units have a right to elect their own deciding agency or sub-legislative assembly, in complete independence from the state. Usually, however, the confirmation of the state is necessary for the local executive authority, although this is not always the case. Frequently the chief agent of state administration in a given unit is also the chief agent of local administration. The local units issue minor legislative enactments, within the limits of the special codes governing them, the general state and national laws, and their own charters. In many instances these local laws must be approved by the state authorities. Quite often the executive must refuse to carry out local enactments which appear contrary to law, or the supervisory authorities may forbid the enforcement of such enactments. Appeals on the question of legality lie to the administrative courts. The administrative courts may be called upon to protect the rights of a self-governing unit as against the state.<sup>28</sup>

Perhaps the greatest difference between local self-government in Germany and municipal home rule in the United States lies in the nature and extent of functions. The German commune, in particular, has very broad powers within its own territorial limits. Local units of a higher rank may be somewhat more restricted as to functions, largely in order to prevent conflict with the communes. The laws of several states contain some such formula as the following: "The function of the commune is the care of the intellectual, moral, physical and economic welfare of its inhabitants, and their education in common welfare."<sup>29</sup> This is in strong contrast with the theory obtaining in the United States, that local governments have only those powers expressly given to them, or which may be deduced from their very nature.

The German commune or other local unit does not, however, exercise its powers in any arbitrary or unlimited fashion. It is subject to several important checks. The first of these is the principle that general state laws are superior to local acts, so that any local act which is in conflict with a state law is non-enforceable. It has already been seen how this principle is applied. In the second place, the principle of state supervision serves as a limitation upon local

<sup>28</sup> See Hatschek, *Ausserpreussische Landesstaatsrecht*, p. 77 ff.

<sup>29</sup> Baden, *Gesetz- und Verordnungs-Blatt*, 1921, p. 347.

activities. This does not necessarily involve a question of powers (although the claim that a given act is *ultra vires* may be raised), since the state codes have done much to decide this question. State supervision also covers procedure, compatibility with law, and in some cases even expediency. The approval of the supervisory authorities is frequently required when loans are to be obtained or large appropriations made. It can hardly be doubted that such supervision acts as a check upon the city in the exercise of its powers. The fact that many state functions are transferred to local agencies of self-government tends to strengthen state supervision. Finally, the organic relationship achieved by making certain agencies in every local unit serve as both state and local authorities cannot fail to bring about a certain integration of state and local functions.

One standard form of local organization in Germany consists of the following organs: A sub-legislative or willing body, elected by the people; an administrative agency, usually collegial in form, elected by the legislative authority, which may be at the same time an administrative organ of the state; a personal head of state and local administration. In addition, there may be special committees, paid heads of various branches of administration, and secondary executives such as associate mayors. In southern Germany the common form of organization includes but one body which is both sub-legislative and administrative.

The willing body to which the general name of assembly may be applied is very much the same in all local units. Certain features (though modified or changed in some instances) may be listed as outstanding:

- The assembly is elected by the qualified electors in accordance with the principles of universal secret suffrage and proportional representation;
- It has minor legislative powers. As a rule it may discuss and decide only affairs that exclusively concern the territory which it represents, unless other matters are assigned to it by the higher state authorities or the law;
- It controls the executive in some respects, especially in regard to financial administration;
- It selects the members of the collegial administrative body, where such exists.



Its actions are subject to a considerable degree of state control, through the right of the supervisory authorities to object to certain of its decisions, to insert compulsory items into the budget, to give confirmation or consent to certain acts of the assembly, to demand information, to confirm the appointment of the executive authorities elected by the assembly, to watch the acts of the administration and to bring objections or otherwise to cause such acts to remain in conformity with the law, and in some cases to dissolve the assembly.

As a rule the next superior governmental division acts as the initial controlling authority over any given unit. Appeals generally lie to the higher administrative authorities, and in many instances to the administrative courts. The final state supervisory authority is the ministry of the interior.

The executive authorities of the various units of local government in the individual states display a far greater variety of organization than do the assemblies. In the great majority of instances, however, the executive authority is a committee chosen at least in part by the assembly, frequently with a chairman and possibly other members appointed by the state authorities. The executive may be a single individual, or an individual with whom are associated advisers and assistants. In nearly every case the executive, or at least the chairman of an executive committee, is both the agent of local administration and the local head of state administration. The functions of the executive authority of a self-governing local unit generally include the following:

- The preparation of the acts and decisions of the local assembly.
- The execution of the acts of the assembly.
- The appointment and dismissal of officers and employees.
- The supervision of the local officers and employees.
- The custody of documents.
- The publication of laws, ordinances, and orders.
- The representation of the local government.
- The carrying on of state business within the locality.
- The right of objection to local enactments.
- The administration of the property of the local unit.
- The preparation of the local budget.
- The supervision of all local administration, with especial reference to budgetary requirements.
- Financial accounting and reporting.
- Giving advice and opinions on various matters.
- Acting as an administrative court for cases appealed by lower units.

The relationship between the assembly and the executive is one of coöperation and of reciprocal control. The assembly acts in a sub-legislative capacity, and also, through its powers of financial control, as the agency to which the administration is responsible from the point of view of the locality. The executive organ carries out the will of the assembly. At any time when this will appears to the executive to be incompatible with state laws or ordinances, however, in his capacity as agent of the state he must refuse to enforce it. The state authorities of higher rank, and in some cases the administrative courts, may be asked to decide the controversy. It will be seen that when the executive refuses to enforce a local enactment, he is not exercising a veto power, but merely, as it were, raising the question of compatibility with the laws of the state.

*Forms of City Government.* There is no standard form of municipal government in Germany, such as exists in France, England, and Belgium. The form varies from state to state, and even from one Prussian province to the next. A German expert<sup>40</sup> in municipal government classified the numerous types now operating in various parts of Germany, into six principal groups, as follows:

1. Magisterial organization in Prussia and Hesse. Two bodies of equal power to make decisions; the mayor is chairman of one (the smaller executive body).
2. The Baden plan. Two bodies of equal power to make decisions; the mayor is chairman of both (two concentric circles, as it were).
3. The system of Mecklenburg-Schwerin, Oldenburg, and Saxony (when the executive is a corporation). Two bodies, but only one possessed of power to make decisions; the other essentially only executory.
4. The mayorial system in Prussia and Hesse; also Anhalt. One deciding body with the mayor as chairman; mayor as head of the commune, with essentially personal executive powers.
5. The system of Bavaria and Württemberg. City council form; one body which possess both power to make decisions and power to administer; mayor as chairman.
6. Thüringia and Saxony (the normal form when the mayor is the executive): one body which chooses its own chairman; the mayor purely an executive organ.

<sup>40</sup> Meyer-Lülmann, in *Zeitschrift für Kommunalwirtschaft*, January 25, 1925, p. 51. This classification, as regards Prussia, is based on the draft of the proposed municipal code.

As a rule the city assembly, whatever its name may be, is composed chiefly of laymen elected by the qualified voters according to the principles of proportional representation. The size of the assembly varies from state to state, and is usually established by law, although in several cases a higher number than that provided for in the law may be established by local action.

In most states the municipal assembly has the power to pass local acts, ordinances, and resolutions. This function is sometimes shared with the administrative authority. The assembly usually elects the mayor or other chief administrative officer and his assistants, and quite often elects certain other officers, such as heads of departments. Its elections are frequently subject to ratification by the supervisory authorities. The assembly possesses certain powers of supervision over administration; and in connection with voting the budget (sometimes in other connections) it may outline in a general way the administrative policies. In several states the executive authority has the right of suspensive veto over municipal enactments which are contrary to statutes or to general public policy. The budgetary reports are generally presented to the assembly for examination and acceptance.

In Württemberg and Bavaria, the organization of cities is unicameral, bringing both the passing of local enactments and the administration of municipal business under the control of the same organ. The mayorial plan in Prussia and Hesse, and the normal plan in Thuringia and Saxony, are also unicameral, but administration is a separate function in the hands of the mayor. In Baden, the executive body forms a part of the assembly, but is separately organized for some purposes.

In most instances the city possesses a second collegial organ charged with municipal administration. This organ, to which the general name of executive committee may be applied, is usually composed of the mayor, assistant mayors, and both salaried and unsalaried aldermen or councillors. In practically all cases, substitutes for the mayor are provided, who act in his place in case of disability. As a rule the mayor and the other members of the executive committee are elected by the assembly, for a term varying from six to twelve years. In several states the term of the mayor may be increased to life. The term of the salaried members of the executive committee ranges from three to twelve years. The term of the

unsalaried members is usually the same as that of persons elected to the representative assembly, as a rule from three to six years.

The functions of the executive authority can only be stated in a general way, since they vary considerably from state to state. In most cases it prepares the resolutions of the city legislative body. In several instances it participates in discussing them, and in all cases it has charge of executing the resolutions of the legislative body when passed. It also administers the communal undertakings, manages the city property, appoints the city officers and other employees (in certain cases with the advice or consent of the legislative authority), and supervises and sometimes dismisses them. In several states it establishes new city offices or departments, usually with the consent of the legislative authority. It outlines the sphere of business of the different departments. In some instances it participates in the discussions of the assembly, with the right to vote. Usually it must contest resolutions or acts of the assembly, which it considers illegal or contrary to public welfare. An appeal in such cases lies to a superior administrative authority or administrative court.

When cities possess a collegial administrative body, the mayor is chairman of this body and chief executive officer of the local administration. In cities where the mayorial form prevails, the mayor alone is the executive organ of the city. Some state municipal codes make the mayor or his representative the chairman of the city assembly, with the right to vote. In practically all cases the mayor has a right to be heard in the assembly. The same thing applies, as a rule, to his representatives and to other members of the executory body. He is frequently the chairman of special committees. The chairmanship of the assembly, of the executive committee, and of special committees, naturally gives to the mayor, who is usually an expert in municipal government with adequate training, a very great control over local administration. He is commonly entrusted with the general execution of municipal business and has supervision over all its branches. His other functions, except his state functions, are as a rule so bound up with the functions of the collegial authority where such exists, that they can hardly be separated. In the mayorial form of municipal government, to all intents the mayor alone exercises the power which otherwise belongs to the executive committee.

As an agent of the state as well as the commune, the mayor usually has charge of the local police, assists the judicial police and the prosecuting attorney, and carries out the general state administration in the city, in so far as such functions are not given to other authorities. In this capacity he is under the administrative control of the state.

The municipal codes and laws of all states provide for committees, yet in practically no two states are the committees constituted in exactly the same way. In a majority of states, including Prussia, Bavaria, Württemberg, Thuringia, Hesse, Oldenburg, and Brunswick, advisory committees may be established by the municipal assembly. These advisory committees are sometimes composed of members of the assembly, and are usually subordinate to it. Such committees may make preliminary investigations of the problems or proposals which are to come before the assembly. In some states the cities may have special administrative committees, or mixed committees, as they are sometimes called. This is true in Prussia, Saxony, Württemberg, Mecklenburg-Schwerin, Oldenburg, Brunswick, and Anhalt. Although these committees differ in name and composition, their functions are very similar. As a rule they are composed of members of the assembly and of the executive body, sometimes with the addition of lay members who are eligible for election to the assembly. These committees may have to manage or to supervise a particular branch of the municipal service. In Prussia, for example, nearly every branch of the service of any particular importance has its "special administrative committee." In Bavaria, a special committee called the "Senate" can make decisions in respect to specified matters without the intervention of the assembly. Thuringia has a Committee on Finance and Administration, and a Social Political Committee, each of which may make decisions in questions falling within the field indicated by its name.

Every state in Germany, except Thuringia, provides for pensions for the mayor and other chief administrative authorities. The pension follows as a rule one of three conditions: incapacity after a certain length of service, failure to be re-elected, and old age. The amount of the pension varies.

*The Finances of Local Units.* Every local unit may levy taxes for its own needs, borrow money for permanent improvements,

make appropriations for public purposes, etc. Certain state and national taxes are apportioned to the locality. All contemplated income and expenditure must be set forth in the annual budget, which is prepared by the executive and voted by the assembly. All financial transactions must be in accordance with the budgetary plans. In every case the state supervisory authorities have a good deal of control over the budget, with the power to insert required items that have been wilfully or negligently omitted. They also approve or disapprove proposed loans. The annual financial reports, after being approved by the local assembly, must go to the state authorities. The national Minister of Finance finally receives all financial statistics of states and communes, as an aid in the task of financial equalization.<sup>4</sup>

*State Supervision Over Local Government.* State supervision over local government varies among the different states, and even among the different governmental divisions. The following methods, however, are in common use:

- Objecting to the enactments or ordinances of local authorities when they appear illegal or inexpedient.
- Declaring such acts invalid.
- Consenting to local enactments before they may be enforced.
- Requiring information.
- Participating in the sittings of local authorities.
- Deciding differences of opinion between the executive and the assembly.
- Dissolving the assembly.
- Exercising disciplinary power over local authorities.
- Doing the work of local authorities which refuse to act, and charging the costs to them.
- Approving local officers.
- Compulsory insertion into the budget of mandatory items.
- Approval of loans.
- Approval of the disposal of real estate.
- General supervision as to legality and procedure.

Through the use of these various methods, the state prevents the local governments from overstepping their authority, makes them fulfil the duties laid upon them, prevents them from unduly burdening their citizens with debt or expenditures, makes sure that they

<sup>4</sup> See RGBI. 1927, I, p. 245. For further facts in respect to municipal finance, see Chapter VII.

have honest and capable officers, and sees that they carry out their functions effectively. It should be noted that this control goes beyond the supervision of administration, and extends to the policies of the local assembly. The assembly is by no means merely the assenting organ of the state authorities, however, as the laws protect it as an organ of local self-government. In general the state supervisory authorities can act only on the matters and under the conditions expressly laid down by the laws. Against their decisions appeals usually lie to the administrative courts.

It is a commonplace in Germany that legislation affecting local government is far too complex. In Prussia alone there are literally dozens of different codes applying to local government.<sup>42</sup> In a few other states the laws are complex not so much because of their number as because of their uncertainty. There is a tendency in most states to supplement the codes controlling local government by special laws, usually bestowing functions. This practice cannot be recommended, except in very unusual circumstances. A complete and flexible code should reduce the amount of supplementary legislation to a minimum.

The elected assembly has long been a feature of German municipal government. The basis for suffrage, however, has been considerably restricted in the past, usually to taxpayers. Under the new national Constitution, local elections are based on "universal, equal, direct and secret suffrage of all men and women who are German citizens," with a residence requirement of one year at the option of the state.<sup>43</sup> In many instances the laws require a citizen to accept any unpaid municipal office to which he may be elected, unless he declines for causes specifically set forth in the laws themselves.<sup>44</sup>

The local governments of Germany are noted for efficiency and freedom from corruption. This is doubtless due in part to high traditions of public service; popular esteem and respect for the administrator, either professional or honorary; and corresponding censure for one who might prove himself unworthy. In part, also, it is due to the remarkable organization which combines local

<sup>42</sup> See Willoughby, W. F., *Principles of public administration*, p. 178, for the advantages of administrative codes in general.

<sup>43</sup> Reichsverfassung, Article 17. Hereinafter referred to as RV.

<sup>44</sup> Compare RV. Articles 132, 133.

autonomy with state supervision. So satisfactory has the machinery of local government been, that organizational alterations since the national Revolution are relatively few. The most important recent change here is not in the structure of the administrative system, but in the increase of democracy, which displays itself particularly in the broader basis for suffrage and the active participation of all classes of society in the local government.<sup>45</sup>

<sup>45</sup> Redlich, Josef, in address before the American Political Science Association, December, 1927.





## CHAPTER XI

### THE POSITION OF PUBLIC OFFICERS

**What is a Public Officer?** The concept of public officer, in Germany, is very comprehensive, embracing university professors and judges, as well as persons employed in the administrative services, and for some purposes, members of the armed forces, although they are usually classified separately. No absolutely clear and all-inclusive definition of the word officer (*Beamter*) is given either in the laws or in legal literature. The national law of officers defines national officer, in the sense of this law, as any officer appointed by the national President, or authorized to function according to provisions of the national Constitution, as a result of orders of the national President.<sup>1</sup> This definition, however, makes no attempt to define officer in general, nor is it a good working definition for all purposes, as it includes military and naval officers who are excluded from certain provisions of the same law.

In the sense of the Criminal Code, an officer is any person employed in the service of the Reich or in the direct or indirect service of a member state, whether for lifetime, for a period, or only temporarily, whether he has taken the oath of office or not. This includes notaries, but not advocates and attorneys.<sup>2</sup>

The view here presented, that a special relationship toward the state, a relationship of public-legal nature, which, though it may be, and customarily is, voluntarily assumed and ended, carries with it certain particular obligations and a claim upon certain special rights that have no counterpart in private contractual relationships, is the distinguishing characteristic of the official status, seems to be generally accepted.<sup>3</sup> No distinction is made in this respect between

<sup>1</sup> *Reichsbeamten-gesetz*, RGBI. 1907, p. 245, No. 1. For national President the original reading was Kaiser. A list of amendments to this law will be found on p. 221 of the *Sammlung von Reichsgesetzen*, etc., by Sartorius.

<sup>2</sup> *Strafgesetzbuch*, Section 359.

<sup>3</sup> See de Grais, *Handbuch der Verfassung und Verwaltung*, p. 41; O. Meissner, *Das Staatsrecht des Reichs und seiner Länder*, p. 277 ff.; Hatschek, *Lehrbuch*, p. 291; Dieckmann, p. 52; Herman James, *Principles of Prussian Administration*, p. 205 ff.

an officer of the Reich and an officer of a member state or of a municipality or other governmental unit, a paid or unpaid (honorary) officer, or a member of the armed forces. The laws, however, usually specify whether certain provisions are to be made applicable to certain special types of officers, such as judicial officers, enlisted men and officers in the army and navy, and honorary officers. Ordinarily the word officer applies to persons engaged regularly in some aspect of the regular public administration, or in teaching in public schools and universities, and is nearly equivalent to civil servant. The latter is the sense in which it will be employed in this chapter.

Meissner<sup>4</sup> remarks that the definition of officer in public law is a very uncertain one. He admits that as a rule anyone is called an officer to whom an office is given, that is, a sphere of public duties defined by the public law; but he holds that this definition is not sufficient and does not cover the conception of officer, since there can be an officer without an office to administer, when for example he is on furlough, placed on call, or suspended from office; moreover, the conception of office is wider than that of officer; there are authorities whose members are not officers, such as arbitrating judges, commercial judges, lay justices, and jurors. He finds the distinguishing characteristic of the officer to be a special type of service-relationship to the state, a relationship of public law; anyone who enters into a service-relationship to the state on the basis of a contract of private law is not an officer, but merely a contractual employee. The fulfilling of the official functions is not the fulfilling of a contract, but rather the fulfilling of the public-legal duty toward the state, the duty of obedience and fidelity. The guarantee of a salary is not essential to the concept of officer, since there are also unpaid public officers, for example, referendars. "Only the public-legal service-relationship remains always essential."

**Constitutional Provisions Affecting Public Officers.** The present national Constitution contains numerous provisions relating to public officers. All officers, national and otherwise without distinction, are required to swear loyalty to the Constitution.<sup>5</sup> The Reich is given the right to establish by law fundamental principles

<sup>4</sup> Meissner, p. 277 ff.

<sup>5</sup> RV. Article 176.

for the law of officers of all public bodies.<sup>6</sup> Certain fundamental principles, however, are laid down in the Constitution itself. Among the most important of these are the following:<sup>7</sup>

All national public officers are appointed and dismissed by the national President, unless the law provides otherwise. He may permit the power of appointment and dismissal to be exercised by other authorities.<sup>8</sup>

The appointment of public officers is for lifetime, unless otherwise specified by law. Pensions and provision for surviving dependents are regulated by law. The duly earned rights of officers are inviolable. For the claims of officers to property rights the course of law stands open.<sup>9</sup>

Officers can be provisionally suspended from office, temporarily or permanently placed in retirement or in another office with less salary, only under conditions and through forms specified by law.<sup>10</sup>

Against every official disciplinary sentence there must be given a method of protest (*Beschwerde*) and the possibility of a rehearing. In the personal record of the officer, entries of facts unfavorable to him are to be made only if an opportunity has first been given the officer to express himself upon them. The officer is to be guaranteed the right to see his personal record.<sup>11</sup>

All citizens without distinction are eligible for public offices according to standards set by law, and in conformity with their qualifications and their accomplishments.<sup>12</sup>

All exceptional provisions against women as public officers are removed.<sup>12</sup>

Public officers are servants of the public as a whole, not of a party.<sup>13</sup>

All officers are guaranteed freedom in their political opinions and freedom of association.<sup>13</sup>

Public officers are entitled to special representation as officers, according to more detailed provisions of national law.<sup>13</sup>

<sup>6</sup> RV. Article 10.

<sup>7</sup> See also RV. Articles 7, 132, 143, 160.

<sup>8</sup> RV. Article 46.

<sup>9</sup> RV. Article 129, par. 1.

<sup>10</sup> RV. Article 129, par. 2.

<sup>11</sup> RV. Article 129, par. 3.

<sup>12</sup> RV. Article 128.

<sup>13</sup> RV. Article 130.

If a public officer, in exercising the public function entrusted to him, violates the official duty which is obligatory upon him with respect to a third party, the responsibility rests fundamentally upon the state or the body corporate in whose service the officer stands. The right of redress against the officer is still reserved. The ordinary process of law may not be excluded. Detailed regulation is a duty of the competent legislative body.<sup>14</sup>

Public officers and persons belonging to the armed forces require no leave of absence for the exercise of their duties as members of the Reichstag or of a state legislature. If they are candidates for seats in these bodies, the necessary leave of absence to prepare for their election is to be granted them.<sup>15</sup>

The officers entrusted with the direct national administration in a state are as a rule to be citizens of this state. The officers, employees and workers of the national administration are, if they so desire, to be employed in their home districts, in so far as this is possible and considerations of their training or the requirements of the service do not stand in the way.<sup>16</sup>

This long list of rights, privileges, and guarantees in the Constitution reflects the principal demand of the very strong associations of public officers which have existed in Germany for a long time past. The law governing special representation of officers' associations, contemplated in Article 130, is not yet in existence; but such associations are recognized in various laws and ordinances and are regulated by administrative ordinances.<sup>17</sup> The organization is by occupation and locality; above the local groups are possibly provincial, then state groups; finally national groups. De Grais gives the following list of "topmost organizations": Der Deutsche Beamtenbund, der Allgemeine Deutsche Beamtenbund, der Reichsbund höherer Beamten, der Gesamtverband deutscher Beamten- und Staatsangestelltengewerkschaften, der Ring deutscher Beamtenverbände, der Reichsbund deutscher Berufsbeamten (in Nationalverband deutscher Berufsverbände).<sup>18</sup>

**Other Important Laws Affecting Public Officers.** The more detailed rights, duties, and safeguards of national officers are set

<sup>14</sup> RV. Article 131.

<sup>15</sup> RV. Article 39.

<sup>16</sup> RV. Article 16.

<sup>17</sup> See de Grais, p. 158, note 6.

<sup>18</sup> *Ibid.*, note 5.

forth in a code of 159 sections, the law of officers of 1907, which has been amended many times but is still fundamental.<sup>19</sup> For some years past the various organizations of civil servants in Germany have been working through their national organizations for the passage of a completely revised law of officers. It is generally acknowledged that such a law is needed and is likely to be passed soon. The important feature of the present law is that it defines the status of civil servants, protects them from arbitrary treatment or dismissal without a thorough investigation, and guarantees various rights. What these are will appear in the course of this study.

A list of the highest national authorities, the higher national authorities placed directly under the highest ones, the authorities placed at the head of various services, the authorities and officers immediately in charge of certain functions, and the special authorities connected with the railway system, was issued by the national President as of August 1, 1926.<sup>20</sup> The value of this list is that it specifies the higher and the highest authorities in each department of administration so clearly as to make it impossible to mistake the authority which should act when the law of officers or other laws may employ the general expression "higher (or highest) national authority."

Unless special legal provisions exist, the legal relationships of both active and inactive national officers are governed by the same provisions which apply to state officers in their dwelling-place; or if they are outside the Reich, in their home state, or in default of such, in Prussia. Under similar conditions, state provisions as to care of dependents will apply.<sup>21</sup>

**Public Officers and the Safety of the Republic.** A nervousness in certain quarters as to the loyalty of some of the "bureaucracy" to the Republic led to the passage of the "Law concerning the Duties of Officers for the Safety of the Republic."<sup>22</sup> This law made several changes in the Law of Officers, of which the most important is the insertion of the following paragraph:<sup>23</sup>

<sup>19</sup> See note 1. This law will be referred to as RBG.

<sup>20</sup> RGBl. 1926, I, 418. See RBG. Section 159.

<sup>21</sup> RBG. Section 19. For other provisions of similar nature, see Sections 20-22. For special exceptions and particular applications of the law of officers, see Sections 156-58.

<sup>22</sup> RGBl. 1922, p. 590.

<sup>23</sup> *Ibid.*, Article I, B; now RBG. Section 10a.

It is incumbent upon a national officer to support the republican form of government, and to avoid anything that is incompatible with his position as an officer of the Republic. He is especially forbidden to misuse his office or the influence of his official position in the endeavor to change the form of government; or in any way to bring disrespect upon it, upon the national flag, or upon the cabinet of the Reich or of a state; or to teach such disrespect to those placed under him; or to tolerate such conduct in office in persons subordinated to him; or in any way to foster or support attempts to restore the monarchy or to overthrow the Republic, or to bring contempt upon the Republic or upon the members of the cabinet of the Reich or of a state.

Another article of this law authorizes the Reich or the state to provide by statute that in the interests of the security of the constitutional republican form of government, certain nonjudicial officers who either occupy directorial positions or act as substitutes for directorial officers, or have to make decisions of policy or are especially entrusted with duties for the safety of the Republic, may at any time be retired temporarily by the highest national or state authorities in charge, with the legal retirement salary guaranteed. In this connection it is non-essential whether the officers affected were appointed before or after the national Constitution became effective. Any such statute must specify in more detail, within the limits of the above authorization, the categories of officers to whom it is applicable.<sup>24</sup>

The Reich lost no time in making use of the authorization just described, as the same law makes the following provisions in respect to nonjudicial national officers:

In the interests of the security of the constitutional republican form of government, [the following] may at any time be retired temporarily by the highest national authorities in charge, with the legal retirement salary guaranteed:

Directors of national authorities and their substitutes, who belong to the present salary group A XIII or a higher group;  
Ministerial councillors in directing positions; and  
Officers who belong to the present salary groups from A XII upwards, if they are entrusted with duties for the safety of the Republic.

<sup>24</sup> *Ibid.*, Article III.

These official positions are specified in the accompanying list. The Cabinet may alter the list, in coöperation with a committee of the Reichstag.<sup>25</sup>

It will be observed that no reason is needed for the "temporary retirement" of an officer under this law. Suspicion alone, or party affiliation, anything or nothing, suffices for the removal of an officer from a key position. The opportunities which the law offers for misuse of power and the introduction of a spoils system are so great, that it speaks well for the high traditions of the German civil service and the moderation and fairness of those in authority during trying times, that no notorious and scandalous abuses of this wide discretion have resulted from it.

**Qualifications and Appointment.** The constitutional power of the national President to appoint and dismiss all public officers of the Reich is delegated,<sup>26</sup> as regards officers of the salary groups AI-IX (the lower and middle groups), to the directors of the highest national authorities, with the power of further delegation. This means that the various departments and other authorities of highest rank fix the qualifications of education, experience, and so on, for the officers to be appointed by them; always, however, subject to the national Law of Officers, and to the constitutional restrictions, as well as to the numerous other laws which affect the relationships of civil servants.

In general, appointments to the higher groups are made nominally by the President, actually by the heads of the national departments concerned. Many laws, however, bestow rights of nomination and consent in respect to certain offices upon the Reichsrat, some other public authority, or a professional association; while other laws require that appointees to specified positions shall possess the qualifications for the judicial service or for the higher administrative service. These qualifications include a university training in law, a first examination, three years or more of training in the practical aspects of law or administration, and a second examination.<sup>27</sup>

<sup>25</sup> *Ibid.*, Article IV.

<sup>26</sup> RGBl. 1922, I, 577.

<sup>27</sup> For list of positions with which the Reichsrat is concerned, see Chapter III. The text of this chapter will illustrate the other points; see the description of the disciplinary chambers and disciplinary courts, and of the training of administrators in Prussia.

The budget law for 1925 (passed in January, 1926) contains the following regulations:

The consent of the national Minister of Finance is required before persons are appointed as officers in the national service or placed on the waiting list for such service. In the making of appointments, preference is given to those on the waiting lists, persons severely injured [in war], and as far as possible to officers qualified for service who have been dismissed or temporarily retired or transformed to the status of workers. Appointments are to be reported at once to the budget committee of the Reichstag. National departments in which it is necessary to dismiss persons from regular positions in order to reduce the force, may not again fill such positions, unless the refilling releases others of the same type, or unless it is urgently necessary for the good of the service, and the consent of the national Minister of Finance is obtained. The decision as to the necessity of dismissals for the sake of reducing the force in a department or in subdivisions thereof, is made by the Minister of Finance in agreement with the national Minister concerned.<sup>28</sup>

Promotions to higher salary groups, as well as new appointments to regular positions, shall not take place so long as the work can be handled by officers already available, even of lower rank. With the previous consent of the Minister of Finance exceptions to this rule are permitted when managerial and directing positions are to be filled, or under exceptional conditions, when an unforeseen need of the service has arisen or some obligation imposed by law must be fulfilled.<sup>29</sup>

The budget law for 1926 makes practically the same stipulations, except that it permits promotions to fill "a third position which has become vacant because of promotion."<sup>30</sup>

Conviction of certain crimes carries with it the loss of various civil rights, including the right to hold public office, either permanently or for a specified term of years.<sup>31</sup>

<sup>28</sup> RGBL. 1926, II, p. 103 ff., Section 7. See similar provisions, RGBL. 1925, I, p. 181, Section 2, V.

<sup>29</sup> RGBL. 1926, II, p. 103 ff., Section 8.

<sup>30</sup> RGBL. 1926, II, p. 187 ff., Section 9.

<sup>31</sup> Strafgesetzbuch, Sections 31-37.



Appointment of a foreigner to a national public office within the boundaries of the Reich automatically naturalizes the appointee.<sup>32</sup>

Officers receive their appointments in writing. All appointments which are not specified as subject to revocation or dismissal are made for life. The claim to salary begins with the actual entry into service. The oath of allegiance required by the national Constitution is taken either when the appointment is made or when the officer enters upon his duties. Refusal to take the oath invalidates the appointment so far as the Reich is concerned; except that persons with religious scruples may substitute a declaration, under conditions specified by the Minister of the Interior. The form of oath required is: "I swear fidelity to the Constitution, obedience to the laws, and conscientious performance of my official duties."<sup>33</sup>

Any national officer must accept transfer to another position of not inferior rank and regular salary, with recompense for the authorized costs of removal if the needs of the service require this; but he may retain his former official title and the income of his previous position (not counting any income from additional offices and the like). He is recompensed for the costs of the transfer. Temporary retirement on the legal retirement salary is provided for in case a position is eliminated in the course of reorganization. The national Chancellor, Ministers, and various other officers named in the law may be placed in temporary retirement at any time, under guarantee of a retirement salary. This is fixed according to length of service, and is not less than 40 per cent nor more than 80 per cent of the regular salary. It is obligatory upon persons temporarily retired to accept other positions appropriate to their qualifications and experience under the same conditions which apply to transfers.<sup>34</sup> Temporary or permanent retirement of a national officer whose official residence is in a foreign country gives him the right to reimbursement for the costs of removal to his chosen place of residence in Germany.<sup>35</sup>

Officers on probation or subject to dismissal or recall, are dismissed by the same authority which appointed them. The consent

<sup>32</sup> RGBl. 1913, p. 583.

<sup>33</sup> RBG. Sections 2-4; RGBl. 1919, p. 1419.

<sup>34</sup> RBG. Sections 23-31.

<sup>35</sup> RBG. Section 40.

of the highest national authorities is required to the reinstatement of officers who have left the national service either voluntarily or otherwise.<sup>36</sup> Voluntary withdrawal from the service, except under very special circumstances, is attended by loss of all rights.<sup>37</sup>

**Duties and Restrictions.** As has been explained above, it is the generally accepted doctrine of German political and legal theory and judicial interpretation that the relation of the public officer to the governmental unit which employs him is not a mere contract of private law, but a special public-legal relationship involving particular duties and particular rights. These duties are often classified under the three headings suggested by the oath of office, namely, the duty of fidelity, the duty of obedience to law, and the duty of conscientious fulfilment of official functions.<sup>38</sup>

From the duty of fidelity arises the obligation of the national officer, who is the servant of the whole people, and not of one party (RV. Article 130) to work in his official capacity for the constitutional republican form of government, and to avoid everything that is incompatible with his status as an officer of the Republic. In exercising the freedom of political opinion especially guaranteed to him by the Constitution, and the . . . right of free expression of ideas, he has, even unofficially, to observe the duty of fidelity accepted by him.<sup>39</sup> From the nature of the official relationship arises, further, the obligation of the national officer to render obedience to the official instructions of his superiors.<sup>40</sup>

The Law of Officers makes it the duty of every national officer not only to perform conscientiously the functions of his office in accordance with the Constitution and the laws, but also to conduct himself in both his public and his private capacity in such a way as to merit the respect due to his position.<sup>41</sup> The acceptance of accessory public offices or duties appropriate to an officer's education and experience is also required.<sup>42</sup> No national officer, however, may accept an accessory office or function with which a regular

<sup>36</sup> RBG. Sections 32, 33.

<sup>37</sup> Meissner, p. 294; de Grais, p. 48.

<sup>38</sup> See *Entscheidungen des Reichsgerichts*, St. 56, pp. 412, 419; Dieckmann, *Verwaltungsrecht*, p. 52 ff.; de Grais, p. 43 ff.; Meissner, p. 283 ff.

<sup>39</sup> On this point, see also Hatschek, I, p. 192.

<sup>40</sup> De Grais, p. 43.

<sup>41</sup> RBG. Section 10.

<sup>42</sup> RGBl. 1923, I, p. 999, Article 13.

salary is connected, or may engage in any business enterprise, without the previous consent of the highest national authorities. Their consent is also necessary before a national officer may enter the management, administrative or supervisory council of any business corporation; it may not be given if the position in question involves either direct or indirect remuneration. In all instances the consent is revocable at any time.<sup>43</sup>

The duty of official secrecy is imposed by several laws. This means that any matters of which an officer has knowledge by virtue of his office, which require secrecy either because of their nature or because of the orders of a superior, are to be kept secret even after he has left the service. Before a national officer expresses a non-judicial expert opinion, he must receive permission from the higher authorities. In bearing testimony, even when an officer is no longer in service, he must refuse to speak on matters for which official secrecy is required, except insofar as he may be relieved of this obligation by his present or former superiors in office.<sup>44</sup> For the members of the national Cabinet or of a state cabinet, the consent of the cabinet as a whole is required. Consent may only be refused, if the giving of the testimony would be injurious to the welfare of the Reich or of a German state.<sup>45</sup>

National officers appointed by the President require his consent before accepting gifts, emoluments, or remunerations from other rulers or governments. No gifts or rewards connected with his office may be accepted by any national officer except with the consent of the highest national authorities.<sup>46</sup>

Titles, ranks, and uniforms of national officers are to be regulated by an ordinance of the President; salaries and other emoluments by an ordinance issued by the President in agreement with the Reichsrat.<sup>47</sup>

The right of public officers to pledge or assign their official salaries or incomes is strictly limited by law.<sup>48</sup>

<sup>43</sup> RBG, Section 16.

<sup>44</sup> RBG. Sections 11 and 12.

<sup>45</sup> ZPO. Section 376. See also Sections 383, 408.

<sup>46</sup> RBG. Section 15.

<sup>47</sup> RBG. Sections 17, 18.

<sup>48</sup> ZPO. Sections 811, 850.

**Restrictions Upon the Right to Strike.** An "emergency" ordinance of the national President, issued as of February 1, 1922,<sup>49</sup> declared that officers of the national railway, as well as all other officers, are forbidden to suspend or to refuse the duties obligatory upon them, and imposed penalties upon all persons who sought to induce a railway strike, or acted to bring one about. Two decisions of the Reichsgericht, based upon cases that arose under this ordinance, deal with the question of the right of public officers to strike. The ordinance was attacked as unconstitutional particularly because Article 159, which guarantees freedom of association, is not among the articles dealing with fundamental rights, which Article 48 authorizes the President to set aside. The court not only answered this objection, but outlined its theory as to the general position of public officers under the various constitutional and legal restrictions that apply to them. The decisions read in part as follows:

During the continuance of the official relationship, Section 10 of the national Law of Officers forbids any suspension or refusal of work. The special relationship of authority of a public legal kind lays upon the officer a special duty of obedience, fidelity, and service, that is different from the obligations of contractual employees, as is demonstrated in his pledging by oath.<sup>50</sup>

It is evident from the proceedings of the National Assembly, that the question of the so-called freedom to strike was not decided in the Constitution. For exactly this reason, in Article 159 the designation "Freedom of association" was selected, instead of the expression "Freedom of coalition." . . . The freedom of association guaranteed in Article 159 therefore does not include constitutional protection for the *means* which are employed to preserve and develop conditions of labor and economic life, especially the suspension of work. . . . The freedom to strike of civil servants would stand in contradiction to their obligations. . . . They may not act in opposition to the will of the people . . . by hindering the fulfilment of public functions in refusing to do their duty. Otherwise the public power itself would become entirely dependent upon the associations of civil servants.<sup>51</sup>

The doctrine here set forth by the court is generally accepted in legal, political, and administrative literature. It is fairly safe to

<sup>49</sup> RGBl. 1922, p. 187.

<sup>50</sup> Entscheidungen des Reichsgerichts, Strafsachen 56, p. 412 ff.

<sup>51</sup> *Ibid.*, p. 419 ff. For a fuller discussion of this topic, see Blachly and Oatman, German public officers and the right to strike, *Amer. Pol. Sci. Rev.*, February, 1928.

prophesy that, except in the event of some great and unforeseen change in circumstances, public officers in Germany will henceforth seek to advance their interests by other means than the strike; as the danger of dismissal for violation of the legal obligations of their position, with the loss of all rights and privileges, will probably outweigh the immediate advantages of the strike, particularly since the right to petition legislative bodies and to use other means of securing favorable laws remains always at their disposal.

**Rights and Privileges.** The public officer in Germany enjoys many special rights and privileges. As has been seen, the Constitution provides for the inviolability of duly earned rights, and for the legal enforcement of the property claims of officers,<sup>52</sup> guarantees freedom of political opinion, freedom of association, and special representation,<sup>53</sup> provides for leave of absence when an officer is a candidate for a seat in a national or state legislative assembly, and allows absence without special leave for the exercise of the duties of members of these bodies,<sup>54</sup> acknowledges the general principle of employing officers in their home districts,<sup>55</sup> and grants various other rights and privileges, in addition to those guaranteed to citizens in general.

The most important rights which it bestows, however, are those to life appointment unless the law specifies otherwise; to access to one's official record and the right to be heard before unfavorable facts are entered thereon; and to protest and rehearing, before an officer can be suspended or dismissed.<sup>56</sup> The Law of Officers has provided in great detail for the procedure to be observed in such cases, as will be seen later in this discussion.

The salary and pension rights of officers are very comprehensive. The Constitution recognizes their rights to pensions and to provision for surviving dependants; and the laws, in particular the

<sup>52</sup> RV. Article 129.

<sup>53</sup> RV. Article 130. The preliminary National Economic Council contains five representatives of civil servants. See RGBI. 1920, p. 853 ff., Article 2, No. 8. For a discussion of the right to petition the Reichstag, see Hatschek, I, p. 250 ff.

<sup>54</sup> RV. Article 39.

<sup>55</sup> RV. Article 16.

<sup>56</sup> RV. Article 129.

Salary Law<sup>57</sup> and the Insurance Code,<sup>58</sup> have established scales of salaries, pensions, grants, and compulsory insurance.

The officer enjoys a title which marks him as an employee of the government,<sup>59</sup> and which is esteemed and respected by the public. He is protected by law from insults in the exercise of his office or with respect to it;<sup>60</sup> and legal penalties are imposed upon anyone who resists an officer in the performance of his duty or who endeavors to coerce him to the performance or omission of an official duty.<sup>61</sup>

**Salaries and Pensions.** The present national salary law, which was passed in December, 1927,<sup>62</sup> consists of two parts; namely, a general statement of fundamental principles, and tables and schedules affecting classifications and salaries. With the latter we shall not concern ourselves greatly, as they must be changed from time to time to meet economic conditions. The general principles, however, are fairly stable.

*General Salary Provisions.* National officers are divided into two groups; namely, regular officers and unclassified officers. The regular officers are divided, for purposes of salary classification, into officers of the classified civil service, soldiers or members of the armed forces, and police officers of the national waterguards.

The salary of a classified civil servant may be either fixed, or subject to increases at regular intervals until the maximum for the given group has been reached. Those who receive a fixed salary are the highest officers of the Reich, including the Chancellor, the Ministers, presidents of courts, etc. These high officers are divided into eight salary classes.<sup>63</sup>

There are twelve groups of classified civil servants who receive regular salary advances to a maximum for each group. Salaries in the lowest group, which includes such positions as guards of buildings and bridges, stokers, and postal messengers, range from

<sup>57</sup> RGBL, 1927, p. 349.

<sup>58</sup> See Chapter XVIII.

<sup>59</sup> RV, Article 109; RBG, Section 75, No. 2.

<sup>60</sup> Strafgesetzbuch, Section 196. Either the officer insulted or his official superiors may lay the complaint.

<sup>61</sup> *Ibid.*, Sections 113, 114. See also Section 232.

<sup>62</sup> RGBL, 1927, p. 349 ff.

<sup>63</sup> *Ibid.*, Anlage 2, p. 388.

1500 marks to 2100 marks; those in the highest group, which includes the directors of various national institutions and the ministerial councillors in the national departments, etc., range from 8400 marks to 12,600 marks.<sup>64</sup>

Soldiers and other members of the armed forces are divided into twenty-two salary groups, of which the highest five and the lowest three receive fixed salaries, and all the others receive salaries which are increased with length of service, to the group maximum. Salaries range from 1080 marks in the lowest group to 24,000 marks for general and admirals.<sup>65</sup>

Police officers of the national waterguards are divided into eight groups, of which all but two receive regular increases. The salary range of these officers is from 1410 marks for the lowest positions to 9700 marks for the highest.<sup>66</sup>

The salaries mentioned above are known as basic salaries, and, except for the few fixed basic salaries, they depend on length of service. In certain cases an officer's record for length of service may be adjusted to include time spent in other service, particularly that of states, communes, and other public-legal bodies.<sup>67</sup> When an officer is transferred from one salary group to another with the same or a higher maximum, he receives the salary within that group, next higher than his previous salary. Under some conditions this will necessitate an adjustment of the record of length of service. In case of transfer to a salary group with a lower maximum, the record of length of service for salary purposes is fixed by the highest national authorities in agreement with the national Minister of Finance.<sup>68</sup>

The officer is notified in writing as to the establishment of his length of service. The decisions of the administrative authorities on this point are authoritative in case financial claims are laid before the courts by an officer. Regular officers have a legal claim to the increases of salary based upon their length of service; this claim rests when a formal disciplinary process is pending, or a regular or preliminary investigation is being conducted in regard to an offense or fault.<sup>69</sup>

<sup>64</sup> *Ibid.*, Anlage 1, p. 356.

<sup>65</sup> *Ibid.*, Anlage 3, p. 391.

<sup>66</sup> *Ibid.*, Anlage zu Anlage 1, p. 387.

<sup>67</sup> *Ibid.*, p. 349, Sections 5 and 6.

<sup>68</sup> Section 7.

<sup>69</sup> Sections 8, 4.

In addition to the basic salaries, regular officers of the Reich (except petty officers and troops living in barracks) receive a "location allowance," which is intended to equalize the cost of living in various parts of the Reich. It is based upon a schedule of localities prepared from time to time by the Minister of Finance with the consent of the Reichsrat, according to fundamental principles established by the Reichsrat and a committee of the Reichstag. Official residences are considered as a part of the location allowance, which is adjusted accordingly.<sup>70</sup>

An allowance, uniform for all officers regardless of salary, is made for each child dependent on and supported by a civil servant, whether legitimate, legitimated, illegitimate, adopted, or stepchild. It ceases when the child has attained the age of 21, and may cease earlier. The allowance is paid for children over 16 only if they are receiving an academic or vocational education, or are unable to earn a living because of physical or mental incapacity, and if they do not have a income of their own beyond a small sum specified by law. An officer receives an allowance for an illegitimate child only if his paternity is established, and if he has either received the child into his household or has otherwise undertaken responsibility for its full support; or in case of a woman officer, if she is the mother of the child and must support it entirely. The highest national authorities may permit the payment of a similar allowance for foster-children and grandchildren who are supported and educated in the household of a civil servant and at his expense.<sup>71</sup>

Married women officers receive an allowance for the children born to them and their husbands only when the latter are unable to support the children without endangering the proper standard of living for the family.<sup>72</sup>

Former laws granted an annual allowance to adjust the salary to the changing costs of living, but since economic conditions are now more stable, the present law does not contain this provision. It does, however, provide that additional allowances may be given if they are provided for in the national budget, or if special grants are made for this purpose. In the same way extra compensation

<sup>70</sup> Sections 9-13.

<sup>71</sup> Section 14, Nos. 1-7.

<sup>72</sup> Section 14, No. 8.



for extra work or for additional offices may be granted, but only under exceptional conditions.<sup>73</sup>

If an officer is required by his official superior to act as a member of the board of directors, supervisory council, or administrative council of a business in which the Reich has an interest, he is obliged to inform his superior of any compensation which he receives—no matter in what form or under what conditions—and to turn it over to the national treasury. In exceptional cases, special compensation may be allowed the officer, according to detailed provisions established by the Minister of Finance.<sup>74</sup>

As has been pointed out in other chapters, the Reich maintains several groups of officers who are in training for the public service, and who are performing duties although they have not the official status of "Beamten." Among these groups are those who, having passed their first judicial examinations, are undergoing a process of apprenticeship and training to become judges, those who are taking teachers' training courses, etc. These as yet unclassified officers, and others who are working for the Reich, are paid until their full appointment to the service, certain stipends in accordance with a fixed schedule.<sup>75</sup> In general this period of apprenticeship is not to exceed five years. The compensation of unclassified officers varies according to the salary group in which they will be placed upon receiving their first full appointment as regular officers, and in accordance with length of service.

Beside the stipends fixed by the schedule, these unclassified officers receive a locality allowance, allowances for children, and possible additional sums comparable to those received by regular officers for extra work.<sup>76</sup>

*Salary Adjustments.* Officers who hold at the same time more than one position in the national service receive the salary and allowances only for the highest paid position. Those who hold only an accessory position receive no allowance in addition to the salary.

If a basic salary is paid in part by the Reich and in part by a state, a commune, or a public law corporation, dwelling allow-

<sup>73</sup> Section 15, No. 1.

<sup>74</sup> Section 15, No. 2.

<sup>75</sup> Section 15 and Anlage 5, p. 393.

<sup>76</sup> Section 16.

ances and allowances for children are made by the Reich only in proportion to the part of the salary which the Reich pays.

Such minor perquisites connected with an office as the supply of fuel and light, uniforms, the use of hunting grounds or public lands, and the like, are reckoned as a part of the salary, at amounts fixed by the highest national authorities in agreement with the Minister of Finance. However, the uniforms and food of petty officers and enlisted men in the army and navy, or allowances for the same, are supplied in addition to the salary.<sup>77</sup>

The law provides that during the next five years from April 1, 1928, one position out of each three that are vacant or become vacant, in the classified civil service lists receiving regular increases in the salaries, shall not be filled. This provision does not hold when the business cannot be handled legally through an assistant. In the remaining cases, exceptions to the provision may be made only with the consent of the national Minister of Finance. Reports on the exceptions permitted are to be laid before the committee on the budget every three months.<sup>78</sup>

If states, communes, and other organs of public law raise their salaries to an amount corresponding to the provisions of this law, they must also reduce the number of their positions in the same ratio as is provided for above. They must examine into each individual case, to determine whether persons now holding positions in certain salary groups are entitled to transfer to the corresponding new salary groups.<sup>79</sup>

*Pensions.* Every officer receiving a salary from the Reich is entitled to a pension for life, if after ten years of service he becomes permanently incapacitated, either physically or mentally, for the performance of his duties. If the incapacity results from the service, he is entitled to a pension even though he has not fulfilled ten years of service. Retirement after the age of sixty-five does not depend upon incapacity.

Pensions are paid in case of temporary or permanent retirement. They consist of a basic sum determined according to the salary previously received by the officer, and a locality allowance; to which may be added, according to circumstances, certain other

<sup>77</sup> Sections 18-20.

<sup>78</sup> Section 40.

<sup>79</sup> Sections 41, 42.

allowances, such as grants for the support of children. The widow (sometimes the widower) and the surviving dependent children of a deceased officer will also be granted pensions.<sup>80</sup>

**Discipline and Punishment.** A national officer who violates the duties obligatory upon him commits an official offence and may receive the disciplinary penalty therefor. Disciplinary penalties are either (1) ordinary punishments, namely, admonitions, reprimands, and fines to amounts fixed by law; or (2) removal from office. Removal may be either a disciplinary transfer, consisting in appointment to another position of similar rank but smaller salary,<sup>81</sup> or an actual dismissal from service, with the loss of title and pension rights. The latter penalty may be remitted in part by the disciplinary authorities if mitigating circumstances exist. Not only the particular offence, but the entire conduct of the officer is to be considered by the authorities who decide upon the penalty; but offences against loyalty to the Republic are to be punished by dismissal.<sup>82</sup> Disciplinary process must not be brought against an officer while a judicial investigation of the acts which may occasion it is under way; and any disciplinary process already undertaken must be postponed upon the inception of such a judicial investigation, until after its conclusion. If the courts clear an officer under these conditions, he is not subject to disciplinary process for the same acts, except as these acts constitute an official offence in themselves. A sentence of guilty given by the court, which does not involve loss of office, leaves it at the discretion of the authorities responsible for official discipline to decide whether disciplinary process shall be brought. When official offences subject to disciplinary process legally involve an obligation for restitution or compensation or a special obligation of civil law, those affected may bring a complaint before the civil courts. This does not interfere with the right of the superior authorities to demand restitution.<sup>83</sup>

Admonitions and reprimands may be given by every superior officer to those placed under him. Fines may be imposed by the

<sup>80</sup> On the subject of pensions, see RBG., Section 34 ff.; Salary Law, Section 25 ff.

<sup>81</sup> RBG. Section 75. In lieu of smaller salary a fine of not more than two months' pay may be imposed.

<sup>82</sup> RBG. Sections 72-79.

<sup>83</sup> RBG. Sections 72-79.

highest national authorities upon all national officers, up to the highest amounts fixed by law; by the authorities and directing officers immediately under these, to one-fourth of the highest amount permitted; by the authorities and directing officers placed under the latter, to one-thirtieth of the highest amount permitted.<sup>84</sup>

Before an ordinary punishment is imposed, the officer is to be given an opportunity to answer the accusation brought against him. The imposition of an ordinary punishment is made in writing. Only the formal complaint (*Beschwerde*) before higher instances is permitted as a legal remedy.<sup>85</sup>

Removal from office must be preceded by a formal disciplinary process, which is ordered by the highest national authorities. This process consists of a written preliminary investigation and an oral hearing. The highest national authorities appoint the officers who are to carry on the investigation and those who are to guard the interests of the public prosecutor's office; in case of danger from delay, lower authorities may make these appointments, subject to the consent of the highest authorities.<sup>86</sup>

For the purpose of deciding disciplinary cases, "disciplinary chambers" which have jurisdiction in first instance are established in a number of cities. The districts served by these chambers are established by the national President in agreement with the Reichsrat. For special reasons cases may be transferred. Each disciplinary chamber consists of seven members, of whom the president and at least two others must hold judicial status in the Reich or in a state, and the remainder must be public officers. A bench of five, of whom the chairman and at least one other must belong to the judicial members, decides cases.<sup>87</sup>

A national disciplinary court acts on disciplinary cases in second instance.<sup>88</sup> This court consists of eleven members. The president and two others must be members of the Reichsgericht, two more must be plenipotentiaries sent by the states to the Reichsrat, and the remainder must be national officers. Seven members, of whom the chairman and at least one other must belong to the

<sup>84</sup> RBG. Sections 80, 81.

<sup>85</sup> RBG. Sections 82, 83.

<sup>86</sup> RBG. Sections 84, 85.

<sup>87</sup> RBG. Sections 86-90.

<sup>88</sup> RBG. Section 86.

judicial group, may hear cases and make decisions. The order of business of the court is drawn up by the court itself and ratified by the Reichsrat.<sup>89</sup>

The members of the disciplinary chambers and of the national disciplinary court are appointed by the national President for three-year terms, after the Reichsrat has expressed itself upon the judicial members and those belonging to the Reichsrat.<sup>90</sup>

When a preliminary investigation is to take place, the accused is informed of the points to be examined into, and summoned to attend. The officer who represents the public prosecution is also invited. Both sides are heard if they appear. Witnesses are examined and other evidence is received; but neither the accused nor the officer of the prosecution may be present during the examination of witnesses. A record of the investigation is kept. At the conclusion of the preliminary investigation, the documents concerning it are placed before the officer of the prosecution; if he considers further investigation necessary, he makes a motion to this effect. The person in charge of the preliminary investigation may grant the motion; or if he considers it unfounded, he must ask the highest national authorities to decide the point. The accused is informed as to the content of the evidence after the conclusion of the preliminary investigation. The documents relating to it are sent to the highest national authorities. The latter, after considering the results of the investigation, may prohibit further procedure and, according to circumstances, may impose an ordinary punishment. The resumption of the process is not permitted under these circumstances; otherwise it may be allowed on the basis of new evidence only, at any time within five years. The process must be brought to an end if the accused resigns his position, title, salary, and pension rights, provided he leaves everything in good order and accounts for all national property of which he may have had charge. In this case an ordinary disciplinary punishment may not be imposed; but the costs of the process thus far are to be borne by the accused.<sup>91</sup>

If the highest administrative authority decides that a matter is to be brought before the disciplinary chamber, the officer of the prose-

<sup>89</sup> RBG. Sections 91, 92.

<sup>90</sup> RBG. Section 93.

<sup>91</sup> RBG. Sections 94-100.

cuting attorney's office prepares a formal accusation, which is communicated to the accused in writing, and the time is fixed by the chairman of the disciplinary chamber for a verbal hearing. At any time before the announcement of the decision of the disciplinary chamber, the highest administrative authority may revoke its decision to refer the case to the chamber, provided the accused consents to such revocation. Under these conditions the process is to be stopped, and an ordinary punishment may be imposed by the highest administrative authority.<sup>92</sup>

The accused may be defended by a lawyer, who is to be given access to the records of the preliminary investigation. The verbal hearing will take place whether the accused appears or not. If the court is willing, he may be represented *in absentia* by his lawyer, but the court may refuse to permit this. The verbal hearing is public unless the chamber orders otherwise for special reasons. The essential facts appearing from the preliminary investigation are communicated to the accused, and, if he admits them and there seems no cause for doubt, further examination of the evidence may be dispensed with. Otherwise, one of the members of the chamber is appointed to examine into the evidence and to report the results which pertain to the case at hand. The officer representing the prosecuting attorney's office, and the accused with his lawyer, are heard. The defence has the last word. The proceedings may be adjourned to another day if the court deems it necessary to secure further evidence, or grants a motion of either party for this purpose. Such a motion may be granted if the points involved are important and if the court is convinced that the motion is not made merely to delay the case.<sup>93</sup>

The disciplinary chamber is not strictly bound by positive rules of evidence, but is to decide according to its own free judgment, based on the evidence and results of the proceedings, in how far the accusation is sustained. In sustaining an accusation the court may also impose an ordinary penalty. The decision and the grounds on which it is based must be published; the defendant must be informed; and a record of all the important features of the proceedings must be kept.<sup>94</sup>

<sup>92</sup> RBG. Section 101.

<sup>93</sup> RBG. Sections 101-07.

<sup>94</sup> RBG. Sections 108, 109.

Either party may appeal to the national disciplinary court, within a four-week period, against the decision of the disciplinary chamber. New facts which would form the basis of another accusation may not be presented before the appeal court. Notice of appeal is filed with the disciplinary chamber which has made the decision concerned. After a further two-week period for the presentation of a written appeal, the opposing party is notified and is given an opportunity to reply. The documents are forwarded to the national disciplinary court, which may take appropriate steps for investigating the case and must then hold a verbal hearing. This is conducted along the same general lines as the hearing in the disciplinary chamber. No legal remedy is available against the decisions of the national disciplinary court, but the President may decrease or remit the penalties which it imposes. When the defendant is found guilty, he is responsible for the bare costs of the suit, or such part thereof as the sentence may fix.<sup>95</sup>

Preliminary removal from office, or suspension, is prescribed by the law under two conditions: (1) If as the result of a judicial criminal process an officer is sentenced to imprisonment; or if a sentence is passed which, though not yet legally enforceable, involves the loss of office by virtue of law; (2) if in a disciplinary process a decision is made which provides for dismissal from the service, even though the decision is not yet legally enforceable. The highest national authorities can order suspension of an officer when either a criminal process or a disciplinary process is brought against him, or during the course of either process. Suspension means a reduction of salary by one-half; in case of special necessity the highest national authorities may make the reduction one-fourth. The amount withheld is applied to the cost involved in securing a substitute, and any remainder to the costs of the investigation. Such part of the income as is not applied to these costs is to be paid to the officer, even though he is subsequently sentenced to removal from office. He may demand information as to the application of the way in which the amount withheld is applied, but may not remonstrate by bringing legal proceedings. If the officer is cleared of the charges brought against him, he is repaid in full the portion of his income that was withheld during his suspension. If he is

<sup>95</sup> RBG. Sections 110-24.

sentenced merely to an ordinary punishment, he is to be repaid all except the amount necessary to pay the costs of investigation and the fine which may be imposed. If the situation appears very grave, an officer may be forbidden to perform the duties of his office even under circumstances which do not warrant suspension; this must be reported immediately to the highest national authorities. In such a case the salary is not reduced.<sup>96</sup>

Suspension under the first condition described above lasts until ten days after the sentence to imprisonment has been annulled, or some other sentence than that mentioned has been imposed by a higher instance. If the sentence does not involve imprisonment, the suspension lasts until it has been executed. If execution is delayed or hindered for a time through no fault of the defendant, there is no decrease of salary for this period. The same is true for the ten-day period after a sentence has been annulled or changed, unless a disciplinary process should result in an order of suspension before the expiration of this period. Suspension under the second condition lasts until the dismissal can legally be put into effect.<sup>97</sup>

All summonses, communications, writs, and orders issued under the foregoing sections of the law<sup>98</sup> are valid; and the periods of performance, delay, and the like, begin from the time when these documents or notices are delivered to the person concerned according to the forms prescribed for judicial notifications in criminal cases. The sworn officers of the administration have in this connection the status of messengers of the court. If the accused has left without informing his superior officers of his departure, notifications are delivered at his latest residence in the locality where he was employed.<sup>99</sup>

Shortages in public or private property for which the Reich is responsible are first established by the authorities immediately in charge. The same authority is to establish whether an officer is culpable; if so, what officer; and in case the shortage is one of materials, at what money value it should be reckoned. The same

<sup>96</sup> RBG. Sections 125, 127-31. See also Section 132 for the application of the foregoing provisions to officers who are temporarily retired.

<sup>97</sup> RBG. Section 126.

<sup>98</sup> RBG. Sections 61-132.

<sup>99</sup> RBG. Section 133.



authority establishes these facts for other property officially administered by a national officer, even though it cannot be charged against the Reich. A decision, accompanied by reasons, is to contain the facts established by the investigating authority. If this is a higher national authority, the decision is executable; in all other cases examination and consent by the higher authority must precede execution. The highest national authority, which must be informed immediately of the decision, may always intervene and may itself write or correct the decision.<sup>1</sup>

The decision must specify what regulations as to execution or security apply to the making good of the shortage. The persons who may be held responsible are: any officer who actually committed the fraud, either as sole perpetrator or as participant, and any officer whose duty it was to administer the fund or property in which the shortage appears, to the full amount that is missing; or any other officer whose official duty it was to participate in the receipt, expenditure, collection, delivery, or transportation of moneys or other property, both public and private, each one only to the amount in his custody, in so far as there is convincing evidence of gross negligence.<sup>2</sup> No bond is now required of national officers except those of the Reichsbank.<sup>3</sup> Execution or settlement is performed by the officers of the courts, on application by the administrative authorities. The former are obliged, without examining into the legality of the decision, to execute summarily unless some reason for delay appears.<sup>4</sup>

The complaint (Klage) may be used by the defendant at any time within one year to institute court proceedings against the decision of the administrative authorities, both as to the main question of liability for the payment of damages, and as to the amount. The court must decide as to the facts from its own conviction, based on the proceedings and the evidence. Even after the lapse of a year, the officer may institute an investigation bearing upon the penalty that was imposed. He may also enter before the court a motion for a suspension or postponement of execution, which the court must decide under conditions specified in the law.<sup>5</sup>

<sup>1</sup> RBG. Sections 134-39.

<sup>2</sup> RBG. Sections 140, 141.

<sup>3</sup> RBG. Section 142; RGBI. 1898, p. 29.

<sup>4</sup> RBG. Section 143.

<sup>5</sup> RBG. Sections 144, 145.

Provisional seizure by the administrative authorities is permitted in case of serious danger that the officer who has been sentenced to make good a shortage may flee, or may so dispose of his property that it cannot be applied for repayment of the obligation. The higher national authorities are to be informed immediately in such a case, and their consent must be obtained. The officer affected by the provisional seizure may request the court to order that a decision of the administrative authorities as described above, which can be made the basis of a complaint and a judicial investigation, shall be produced within a specified time. If this is not done, the officer may move for release of seizure.<sup>6</sup>

No fees or stamp duties are charged for the administrative process in regard to shortage.<sup>7</sup>

Judicial process may be employed to enforce property claims of national officers arising from their official status, and similar claims of their surviving dependents, after a decision by the highest national authorities has first been secured. A complaint for this purpose must be entered within six months. In civil suits, when a claim based on the law of officers is upheld, the investigation and decision in final instance are made by the Reichsgericht. The interests of the "national fiscus" are represented according to specified circumstances by the higher or the highest national administrative authorities.<sup>8</sup>

The decisions of the disciplinary and administrative authorities as to whether and when a national officer shall be removed from office, temporarily or permanently retired, or suspended, and as to the imposition of ordinary punishments, are binding upon the courts when property claims are to be decided.<sup>9</sup>

The criminal code provides penalties to be enforced through ordinary criminal process, for the unauthorized exercise of public office or authority, and for corruption and other abuses in office. Certain misdeeds, such as falsely arresting a citizen or committing a breach of the peace, are made subject to heavier penalties when performed by an officer than when performed by an ordinary citizen.<sup>10</sup>

<sup>6</sup> RBG. Section 146, 147.

<sup>7</sup> RBG. Section 148.

<sup>8</sup> RBG. Sections 149-53.

<sup>9</sup> RBG. Section 155.

<sup>10</sup> Strafgesetzbuch, Sections 132, 331-59.

**The Personnel Reorganization Ordinance.** The serious economic and political situation of 1923, as has been stated elsewhere, resulted in the passage of emergency laws placing in the hands of the Cabinet for a specified time an extremely wide ordinance power, which included the right to depart from constitutional guarantees of fundamental rights. On the basis of the first of these laws<sup>11</sup> the Cabinet issued the so-called "Personnel Reorganization Ordinance."<sup>12</sup> This ordinance provided for the retirement of employees at the age of fifty-eight and departed in many other ways from both the Constitution and the Law of Officers. The object was the reduction of the civil service list, which had become greatly swollen when many public officers called to the front were replaced by persons not fit for military service, who acquired the status of public officers while the former also retained it. The ordinance naturally aroused much opposition and dissatisfaction; in consequence, it has been amended repeatedly. After its original purpose of reducing the number of officers had been accomplished, most of it was repealed. The principal features still in effect are the clauses dealing with married women officers, which will be discussed later, and the provision that national officers as well as officers of the states, municipalities, and municipal associations, are obliged to accept any accessory office or occupation in the public service which is appropriate to their education and experience.<sup>13</sup>

The Personnel Reorganization Ordinance was followed a few months later by another ordinance, based on the second authorization act, which provided that officers permanently retired under the former ordinance might obtain on favorable terms, lands suitable for gardens and farms.<sup>14</sup> A law of 1925 which made many changes in the Personnel Reorganization Ordinance provided that officers in temporary retirement might be discharged from the public service upon their own motion and in lieu of all accrued pension rights of every kind.<sup>15</sup>

<sup>11</sup> RGBI. 1923, I, p. 943.

<sup>12</sup> RGBI. 1923, I, p. 999. For important amendments see RGBI. 1924, I, pp. 39, 677; 1925, I, p. 181 ff.; 1926, I, pp. 185, 398, 411, 531, 532; 1927, I, p. 185. These amendments have repealed the original law in large part.

<sup>13</sup> *Ibid.*, Article 13.

<sup>14</sup> RGBI. 1924, I, p. 53. States and localities are authorized to make similar provisions for their officers, employees, and workers.

<sup>15</sup> RGBI. 1925, I, p. 180 ff., Article 3. For other adjustments, see the following articles of the same law.

**Women as Public Officers.** Article 109, paragraph 2, of the Constitution, which declares that men and women have fundamentally the same civil rights and duties, and Article 128, paragraph 2, which sets aside all exceptional provisions against women as civil servants, have been the subjects of much controversy. Meissner considers that in consequence of Article 109, paragraph 2, the admission of women to the public service is expressed as a principle, and that the hitherto existing prohibitions upon the marriage of women civil servants and teachers, which compel such officers in case of marriage to leave the public service and lose claim to a pension, are set aside.<sup>16</sup> He holds that Article 128, paragraph 2, is not merely a standard for future legislation, but an authoritative norm, enforceable law.<sup>17</sup>

Not all authors, however, share his view. Thus, Poetzsch<sup>18</sup> holds that provisions which entail a special regulation for married women, "because of the natural lessening of the fitness for public service of married women as a consequence of pregnancy and childbirth," are not necessarily "exceptional provisions."

On May 10, 1921, the Civil Senate of the Reichsgericht decided<sup>19</sup> that certain articles of the Bavarian public school law, which provided that the marriage of a woman teacher involved the loss of her position, and that a woman teacher who married while not actively engaged in her profession became thereby ineligible for reappointment, were incompatible with Article 128, paragraph 2, of the national Constitution. The court held in part:

The fundamental principle expressed in Article 128, paragraph 2, is meant to establish the above mentioned idea of equality of man and woman, in the domain of the rights of officers. As according to Article 109, paragraph 2 . . . men and women have the same civil rights, they are likewise to be fundamentally equalized as civil servants. This of course does not mean that henceforth there is to be absolutely no more distinction between male and female officers in law and administration . . . Special provisions . . . which recognize this distinction, are . . . permissible. But this must not lead to fundamental differences in the treatment of men

<sup>16</sup> Meissner, p. 279.

<sup>17</sup> *Ibid.*, footnote.

<sup>18</sup> Poetzsch, Handausgabe der RV., note 4 to Article 128. See Anschütz on the same article.

<sup>19</sup> Entscheidungen des Reichsgerichts, Zivilsachen, 102, p. 145 ff.

and women in their capacity as civil servants. A more incisive distinction . . . can hardly be imagined than this, that the man may marry with no injury to his official status, while the woman, if she is married, may not enter the service, and if she marries as an officer, she suffers the loss of her position. . . . The fact that through the greater influence of marriage upon a woman, her capacity . . . and her performance can be injured, and in case . . . children are born, at least temporarily must be injured cannot justify, especially in its limitation to the occupation of the woman public school teacher, the declaration that with marriage itself an injury to capacity and to performance may be considered as already present, and that consequently a union of marriage and teaching in the person of the woman is forbidden as a matter of course.

A very similar case, brought on appeal by a married woman teacher of Württemberg, was decided on much the same grounds, on January 5, 1923.<sup>20</sup> The court especially remarked that the arguments as to population policy and social policy which had been brought forward to uphold the Württemberg discriminations against married women teachers were not to be considered, except within the limits described in the case just cited.

A married woman teacher was dismissed in Prussia under the terms of an appointment which antedated the present Constitution. The Reichsgericht<sup>21</sup> held that all such provisions are invalidated by Article 128, paragraph 2, and that the argument brought forward by the school authorities, to the effect that the plaintiff was dismissed under a private contract, was without foundation.

The appointment of the civil servant is not made by contract, but by a one-sided act of state authority. Any conditions of appointment which may be contained in the notice of appointment are not contractual agreements; they merely reproduce—in more or less detail—the public law governing the official relationship which is about to be established. The right of the authorities to dismiss the plaintiff in case of her marriage does not rest upon a contract made with her, but rather upon the provisions of the Prussian school law, which require the dismissal from service of a woman teacher upon her marriage. . . . But these are invalidated by the national Constitution, and thereby the reservation in the notice of appointment has also lost its legal significance. . . . Consequently the dismissal of the plaintiff . . . lacks a legal basis. She is entitled to her legal official salary in spite of it. . . . The illegal

<sup>20</sup> Entscheidungen des Reichsgerichts, Zivilsachen, 106, p. 54 ff.

<sup>21</sup> *Ibid.*, 110, p. 190 ff. This case was decided on February 13, 1925.

dismissal of the plaintiff would not have taken from her the status of occupant of a regular teaching position, even if the school authorities meanwhile had refilled the position. The claims of the plaintiff . . . are consequently not impaired.<sup>22</sup>

Article 14 of the Personnel Reorganization Ordinance, as amended in 1925,<sup>23</sup> reads in part as follows:

1. The service relationship of married women officers and teachers in the service of the Reich, the states, and municipalities (municipal associations) can at any time be concluded by either party at the end of a month, subject to three months' warning. Warning may be given by the administration, if in the opinion of the authorities in charge
  - a. The economic provision of the woman officer seems secure, in view of the height of the family income, and
  - b. The dismissal is advisable for the good of the service.A woman officer cannot be dismissed if her removal is opposed to the needs of the service.  
This holds even for life appointments.
2. Those dismissed on the ground of paragraph 1 may be granted a compensatory income of the height of the non-active-service income which would be due according to the length of service at the time of dismissal, if and so long as the economic provision of the dismissed women officers no longer seems secure, in view of the height of the family income. Children under 18 years, from a marriage made by the woman officer during her period of service, can in case of the death of the parents be granted a revocable orphans' income.
3. To those dismissed on the ground of Paragraph 1, under forfeiture of the rights arising from paragraph 2 a compensatory sum is to be granted according to the terms of the provisions of Article 5, if a proper claim for the same is made within six months after the dismissal. For married women officers who are dismissed or withdraw after July 1, 1925, the compensatory sums provided for are to be doubled if they held life positions at the time of dismissal.<sup>24</sup>

<sup>22</sup> See, however, *ibid.*, 110, p. 297 ff., in which marriage is held a "weighty ground" for dismissal of a permanent employee of a city electric establishment who is not a civil servant and consequently cannot enjoy the protection of Article 128, par. 2.

<sup>23</sup> RGBl. 1925, I, p. 181, Section 2, IX. This is to be effective until the contemplated new Law of Officers is passed, or at latest until March 31, 1929.

<sup>24</sup> For further details, see *ibid.* (4) and (5); also Article 7, No. 7, of the same act.

It is impossible to justify these discriminations against married women, in view of the constitutional provisions and court decisions cited above, except as emergency measures, which they admittedly are. To make marriage a disability *per se* for women and not for men, is certainly to deprive women of the equal civil rights and the equality in public office guaranteed by the Constitution. The provisions just cited have not yet been the subject of a decision by the Reichsgericht; and the issues of public law that would be raised in a case attacking them would be so many and so various that no prophecy can be ventured as to what such a decision might be.

To summarize the situation of women in the civil service in Germany: Legally, they have equal rights with men, except for certain discriminations against married women which still exist, despite the court decisions to the effect that Article 128, paragraph 2, protects women against dismissal because of marriage. Practically, appointment to office depends in the last analysis upon the human factor, the attitude of the appointing authority.

**Liability of the Reich for its Officers.** The Civil Code provides that if an officer "wilfully or negligently commits a breach of official duty . . . towards a third party, he shall compensate the third party for any damage arising therefrom."<sup>25</sup> In case of negligence alone, the officer is liable only if the injured party cannot obtain compensation elsewhere. A law of 1910<sup>26</sup> transfers responsibility for compensation in such cases (subject to special exceptions in other national laws) from the officer to the Reich. If the officer cannot be held responsible because of mental defects or disturbances, the Reich shall nevertheless pay damages as in case of negligence alone, with due regard to fairness. For any sums thus paid out on behalf of an officer, the Reich may demand repayment from him, except in the second case named.<sup>27</sup>

The state courts have exclusive jurisdiction over suits involving claims against the Reich under this law, regardless of amount. In

<sup>25</sup> Section 839. English version by Dr. Chung Hui Wang.

<sup>26</sup> RGBl. 1910, p. 798.

<sup>27</sup> *Ibid.*, Sections 2, 6.

civil suits when such claims are made by complaint or counter-complaint, the hearing and the decision in final instance are functions of the Reichsgericht.<sup>28</sup>

**Officers in the States.** The national Constitution, as we have seen, contains certain provisions in regard to the status and the rights of civil servants, which apply to all alike, whether employed by the Reich itself, the states, or the municipalities. Furthermore, it gives to the Reich the power to establish by law fundamental principles for the law of officers of all public bodies.<sup>29</sup> No comprehensive and all-inclusive fundamental law of officers has been passed as yet under this authorization, but several special laws have established principles. In addition to those provisions which have been discussed already, such as the law authorizing the states as well as the Reich to provide for the retirement of officers in leading positions in order to secure the safety of the Republic,<sup>30</sup> the most important national legal restriction which now affects state and local officers is the following:

States, municipalities, and other public corporations are forbidden to make more favorable regulations in respect to dwelling allowances and classification of localities than are made in the same places for national officers of similar salary groups and the same length of service. This provision is not to be evaded by the increase or new establishment of other allowances in order to defeat its purpose. Similar principles apply to former state and local officers drawing retirement pensions.<sup>31</sup>

For several years the states and municipalities were forbidden by national law to make the terms of the salaries and pensions which they paid to higher officers and teachers more favorable than those offered by the Reich to national officers of similar standing. A

<sup>28</sup> *Ibid.*, Section 3. Further sections of the law exempt from its provisions officers who receive no salaries except fees; and certain officers dealing with foreign affairs. Injured third parties who are not citizens of the Reich may enforce claims to damages only if their countries allow reciprocal claims.

<sup>29</sup> RV. Article 10.

<sup>30</sup> RGBl. 1922, I, p. 590.

<sup>31</sup> RGBl. 1926, I, p. 180.



special court was established to enforce this principle. The law was amended many times, and finally repealed.<sup>32</sup>

A uniform law of officers which will apply to civil servants in the Reich, the states, and the municipalities, has long been demanded from many quarters, including the associations of civil servants. Meanwhile, the states establish their own civil service regulations, subject to the restrictions of the national Constitution and the national laws which apply. In general, the regulations are very similar in principle to those which apply to national officers. This could hardly fail to be the case in view of the constitutional requirements; yet in many respects the similarity is not due to these requirements, but to the fact that certain principles governing the status of civil servants have long been generally accepted and embodied into law.

**The Status of Officers in Prussia.** A brief glance at the status of officers in Prussia will serve as a general example of their status in the German states, although it must be kept in mind that there are many differences in detail.<sup>33</sup>

The constitution of Prussia<sup>34</sup> contains the following provisions in respect to public officers:

Officers, employees and workers of the states and the public-law corporations require no leave of absence for the performance of their functions as deputies [to the Landtag]. If they are candidates for a seat in the Landtag, the necessary leave to prepare for their election is to be granted them. Salary and wages are still to be paid.<sup>35</sup>

<sup>32</sup> RGBl. 1920, p. 2117. For list of amendments, see Sartorius, also index of RGBl. under *Besoldungssperre*gesetz.

<sup>33</sup> See the provisions of the Bavarian constitution; Section 35, II; Sections 61, IV, V; Section 62, III; Section 67; Section 68, I, II; Section 77, I, IV. These supply only one feature sufficiently different from the provisions of the national and the Prussian constitutions to deserve especial mention—the requirement that any person appointed to office shall have been a German citizen for at least five years (Section 68, I). The indexes of state laws should also be consulted.

For Saxony, see in addition to the state constitution the excellent annotated edition of the laws concerning officers, by Schulze and Roth, *Das Sächsische Beamtenrecht*, 2 vols., Dresden, 1925.

<sup>34</sup> *Verfassung des Freistaats Preussen* v. 30. November, 1920 (*Preussische Gesetzssammlung*, 1920, p. 543).

<sup>35</sup> *Ibid.*, Article 11, 1-3.

The state ministry appoints the direct officers of the state.<sup>36</sup> All citizens of the Reich, without respect to sex and previous occupation, may be appointed as state officers if they possess the qualifications for the office. The qualifications necessary for the individual offices are prescribed by law. Every state officer must take an oath to the effect that he will administer the office entrusted to him impartially, according to his best knowledge and ability, and that he will conscientiously observe the Constitution. Against their will, state officers cannot be dismissed, placed in temporary or permanent retirement, or transferred to another position with lower salary, except under the legally prescribed conditions and forms. For their property claims and those of their surviving dependants the path of legal action remains open. In other respects the law of officers is to be regulated by statute, within the limits of national law.<sup>37</sup>

The Prussian Code of General State Law,<sup>38</sup> which was adopted in 1794, contained "the earliest comprehensive enactment regulating the legal relations of officers."<sup>39</sup> Much of this is still in effect. No single complete law of officers for the state has ever been enacted; but many separate laws and ordinances govern various aspects of the official status and relationships.<sup>40</sup> A description of the status of officers in Prussia, according to these various provisions, would be almost a repetition, with minor changes, of what has been said about national officers. Life appointment, regular increases in salary to a legal maximum, legal rights to salary and pensions, provision for surviving dependents, and other financial guarantees, removal or suspension only after formal investigations with the possibility of rehearing—all these features of the national system are repeated in the Prussian.

The laws and ordinances provide for various proofs of qualification for office, according to the positions to be filled. These proofs

<sup>36</sup> *Ibid.*, Article 52. Direct state officers are those employed by the state itself; indirect officers are those "placed in the relationship of officer in respect to a corporation subordinate to the state and coöperating with it in the fulfilment of public functions (province, county, municipality, public law corporation, etc.)". De Graiss, p. 147.

<sup>37</sup> *Ibid.*, Articles 77-80.

<sup>38</sup> Allgemeines Landrecht für die Preussischen Staaten.

<sup>39</sup> Herman James, *Principles of Prussian administration*, p. 205. For discussion and comprehensive citations covering several pages, see de Graiss, pp. 146-70.

include examination, seniority, a position on the waiting list (which presupposes earlier demonstration of fitness), school certificates, experience in technical operations, and probationary service. Qualification for the higher administrative service presupposes a university career, a first examination, and six months of experience in connection with the courts, identical with the earlier training of candidates for the higher judicial service. Then follow two and one-half years of experience in the service of various administrative authorities, and a second examination, success in which opens the way to the higher administrative service. The law permits persons of marked ability and unusual fitness, specialists in some technical field, or those whose education has been judicial rather than administrative, to be appointed to the higher administrative service without the training just described; but such appointments are exceptional.<sup>40</sup>

In some states, such as Baden, Brunswick, the Hanseatic cities, and Württemberg, the training for the higher administrative service is almost or quite identical with that for the judicial service.<sup>41</sup>

**Summary and Conclusions.** A public officer in Germany occupies a special legal position, entailing peculiar rights, privileges, duties, and responsibilities. Many constitutional articles and numerous laws, including a national law of officers, regulate the official status. The officer is under oath to fulfil his duties conscientiously, and is subject to reprimand, warning, and fine, or in extreme cases, to suspension and dismissal after due hearing, in case he fails to do so. He may not employ the "strike" as a means of bettering his position, and he is under various other restrictions based upon his public-legal relationship.

This same relationship, however, carries with it some very substantial advantages. The officer is appointed for life, and is secure in an honorable career unless he forfeits it by his own misconduct. Ample protection is afforded him against arbitrary suspension and dismissal, through the disciplinary court system. He has a legal right to his salary and to a retirement pension and other allowances. The national Constitution protects him in freedom

<sup>40</sup> de Grais, p. 149 ff. Meister, *Ausbildung und Prüfung der höheren Verwaltungsbeamten in Preussen*, *Juristische Wochenschrift*, January 1, 1927.

<sup>41</sup> *Juristische Wochenschrift*, January 1, 1926; articles by Buzengaiger, Levin, Mittelstein, Feyerabend, and others.

of political opinion and freedom of association. Great national associations of civil servants, which are recognized and protected by law, are constantly working for improvements in the position of their members.

The public service requirements and the educational system are integrated in a remarkably thorough fashion. Both the Reich and the states require for the higher ranks of public service, a university education, followed by practical experience and a special qualifying examination; for the middle ranks, a secondary school education, with other proofs of qualification; and for the lower ranks, a common school education supplemented by such special training as a particular type of position may require.

The advantages of public service as a career, the educational requirements, and the general esteem attaching to office in Germany, have long been sufficient to attract persons of high caliber and great ability, and to draw into every rank and grade of the service an exceptionally competent personnel. The organization of the administrative system, whereby careful supervision is assured throughout; the fact that any momentary advantage to be gained by graft or peculation is more than counterbalanced not merely by the risk of discovery and disgrace, but by the added risk of destroying a life career; and, finally, the quality of the public officers themselves, together with the traditions of integrity attaching to the service, all combine to bring about a remarkable efficiency and honesty in German public administration.

The general appreciation of the value and importance of the official personnel is well expressed by the national Minister of Finance,<sup>42</sup> in connection with a discussion of proposed increases in budgetary appropriations for salaries:

The *salary reform* undoubtedly demands not inconsiderable funds; these, however, are considerably smaller than is assumed by the public. The amount required annually for the whole body of German officials, including expenditure on the Railway and Postal Service, may be estimated at 1,250 million reichsmarks in round figures. This sum will, however, be reached only if the States and communes adopt the Reich settlement in all respects

<sup>42</sup> Memorandum sent by the Finance Minister of the Reich to the Agent General for Reparation Payments, November 5, 1927, published in Official Documents of Reparation Commission, No. XVII.

and without exception. Of the total sum, something over 300 million reichsmarks falls to the share of the Reich. But in considering this latter sum it must be remembered that only the smaller part represents salaries of officials proper. The major part, viz., 170 million reichsmarks, is intended for the victims of the war. It is impossible to answer the question of increasing all these payments in the affirmative or negative solely from the standpoint of financial policy. On the contrary, this is one of those questions in the decision of which quite different standpoints must have a part. It is a case of protecting a very large section of the German people from the most serious disturbance and of restoring its confidence, partially shaken, in the guardianship of the State. This consideration plays also a special part in the case of war victims. . . . The same applies to the officials. Moreover, they are the persons on whom the State has to rely in the execution of its will and whose attitude toward it and its existence is of the greatest importance in relation to the spirit of the nation as a whole. All business elements also agree with the Government that there can be no more serious impediment to the work of reconstruction than the decline of German officialdom, renowned for its devotion to duty and its integrity, into a state of unreliability. Germany has every reason to maintain the great asset of her officialdom.

## CHAPTER XII

### ADMINISTRATION OF POLICE FUNCTIONS

**The Nature of Police Functions.** The concept of police functions<sup>1</sup> has long been the subject of much discussion among German jurists and publicists; but as yet no universally accepted definition has been worked out. Most writers agree that the fundamental police functions are those of protecting society and the individual, and preserving public order; some even go so far as to claim that there are no others. In general, however, police functions are understood to include also: first, any use of the coercive power of the state in carrying on its internal administration; and second, many tasks which are laid upon the police authorities as a matter of convenience. Not all acts performed by the police authorities are by nature police functions; thus, the training of candidates for the police service can hardly be so classified. On the other hand, police functions may be performed by other than the special police authorities, or the police authorities may act merely to assist other agencies of the government. Public health work, for example, is considered a police function, but many other agencies, as well as the police, participate in carrying out the public health laws. Finally, police functions may be performed without an actual exercise of police power, that is, "the legal authority and force . . . [to intervene] in the sphere of rights of the individual."<sup>2</sup> This power must exist, however, and must be capable of being applied when needed. From all these considerations, it appears that in Germany a police function is an act of the civil power designed to protect person, property, or public order, or to carry on the work of internal administration where this involves

<sup>1</sup> The subject of police functions will be treated very briefly in this book, partly because more material is available on it elsewhere than on many other aspects of German public administration; partly because other chapters have treated special aspects of organization and control so fully that only a general sketch is needed here.

<sup>2</sup> Hatschek, *Lehrbuch des deutschen und preussischen Verwaltungsrechts* (3d and 4th ed.).

or may involve coercion or a restraint upon personal freedom. Such acts are usually, but not necessarily, performed by special agents known as police authorities.

It is customary to classify police functions into two main groups, namely: Security functions and administrative functions. Security functions are police activities designed to protect the public or members thereof from any dangers that may be threatening them, and to guard against disturbances of the public safety, order and peace.<sup>3</sup> Closely related to these functions are such others as the apprehension of criminals and the bringing them to justice, the execution of sentences, the trial of minor cases, the quelling of riots, the restoration of peace and order if disturbances have occurred, and similar activities. Although, strictly speaking, several of the last-named acts may be considered as "auxiliary to the criminal courts and hence a part of the judicial machinery,"<sup>4</sup> or for some other reason "logically not police functions by nature,"<sup>5</sup> yet these distinctions are theoretical rather than practical. For working purposes all the activities which have been mentioned may be considered as security police functions.

Administrative police functions in the broadest sense are "all other legitimate police activities" except protection against dangers from evilly disposed persons. More narrowly conceived, they are any legal application of the coercive power of the state in civil affairs, or any authorized employment of the police authorities, for the furtherance of some public purpose, or the carrying out of some administrative undertaking, which, though designed for the general benefit, may encroach upon the personal rights and liberties of individuals. The enforcement of factory laws and of regulations for the prevention of fire are examples of administrative police functions.

**Security Police Functions.** For the sake of convenience, the principal security police functions may be grouped according to purpose into various subdivisions. Such classification is necessarily

<sup>3</sup> De Grais, *Handbuch d. Verfassung und Verwaltung*, p. 355 ff.; Hatschek, *Lehrbuch*, p. 113 ff.; James, *Principles of Prussian administration*, p. 219 ff.; Lympius, *Die Verfassung und Verwaltung*, p. 109.

<sup>4</sup> James, p. 220.

<sup>5</sup> de Grais, p. 356.

imperfect because no clear line of demarcation can be drawn in many instances.<sup>6</sup>

*Police Activities in Aid of Justice.* The functions of apprehending criminals, holding them for trial, bringing any available evidence before the court, and in general of assisting the public prosecuting authorities; of making arrests, searches, and seizures; of trying persons charged with minor violations of law, and inflicting small penalties; of cooperating in the enforcement of the laws against idleness, vagrancy, and begging; of supervising persons on parole; and various other acts of like nature, may be considered as directed to the end of assisting the courts in the administration of justice.

*Preservation of Peace and Order.* In fulfilment of the primary police function of preserving peace and order, it is the duty of the authorities to guard against acts of treason, rebellion, riot, and tumult; to prevent the formation and activities of societies or associations which plot the death of any member of a republican government of the Reich or of a state (an echo of the Rathenau murder); to examine passports and issue the proper papers and keep the necessary records in connection therewith; to enforce the laws governing the press, speech, association, and assembly; and to preserve the peace under all conditions. In case of great disorder the state government may ask for military help; or the President may act under Article 48 of the Constitution.<sup>7</sup>

*Protection of Morality and Decency.* The police function of protecting morality and decency includes supervision over the closing hours of taverns and inns; over the employment of women in such places; and over theaters, plays, exhibitions, and places of public amusement; also the enforcement of laws against sexual offences, cruelty to animals, the disturbance of religious services, and so on.

*Protection of Person and Property Against Accident.* Accidents include personal injuries from any cause; also explosions, collapses

<sup>6</sup> The classification here adopted is in general, but with certain modifications, that of de Grais, Lympius, and Hatschek. A list of the laws governing the various police functions in Prussia alone would fill so many pages that it is impossible to cite them here. Complete citations for Prussia and the Reich are given in de Grais, pp. 355-473. The indexes of laws of the other states may be consulted under the general topic *Polizei*, and the names of particular police functions.

<sup>7</sup> See Chapter IV.



of buildings, fires, injuries caused by or to animals, etc. The police function of providing for the general security includes the obligation of using appropriate methods to prevent accidents and of giving immediate assistance if they should occur. The restoration of lost property to the rightful owner may be mentioned here.

**Administrative Police Functions.** Administrative police functions include a very great number of different activities, to which others are constantly being added. Many of the so-called "paternalistic" functions of the state are included here.

*Public Works and Building Regulation.* The establishment of building regulations and the organization of authorities to administer and enforce them, and the construction of public works, are an important police function. It includes the granting of building permits, with due observation of the restrictions as to height, area, relation to street, curb, and so on; of the legal requirements in respect to framework and construction, safeguards against fire, special regulations for public buildings, tenements, etc.; also the preservation of public buildings and monuments and the construction of canals, streets, railways, and other public works. There is no national supervision of these activities, except in respect to national property or other definite national interest; ordinarily each state is free to act. The minister of finance is the central authority in Prussia for this function; he is assisted by an Academy of Construction. Expert councils also assist the *Regierungspräsident*, who is the provincial authority. In each locality are appointed highly trained construction experts, occupying civil service positions. The local police authorities coöperate in the enforcement of building regulations. Considerable grants of money by the Reich, the states, and various cities, have been applied to the building of dwellings in order to relieve the great shortage of houses from which Germany has been suffering.

*Public Health Functions.* The enforcement of laws and ordinances for the security and improvement of the public health is a most important police function, in which every unit of government is concerned. A national public health office and a national public health council are connected with the Ministry of the Interior.\* Each state supervises public health work through its own

\* See Chapter VI.

cabinet. In Prussia, the ministry of public welfare acts in this matter, with other ministries handling certain special branches; the state cabinet also appoints an advisory body known as the state health council. Public health work in the province, except for a few matters, handled directly by the Oberpräsident, is under the supervision of the Regierungspräsident, who is assisted by a medical council and a veterinary council; in the county, it is under the Landrat and the local police authorities, with whom similar councils are associated. In each county is a state health officer known as the county physician, who is appointed by the minister of public welfare. Every city of more than 5000 inhabitants has a health commission. The ordinances issued by these various authorities are enforced by the help of the local police authorities.

As a part of the public health functions, is considered the administration of the laws and regulations governing admission to the practice of medicine, surgery, dentistry, midwifery, veterinary surgery, and the like; the management of such institutions as hospitals and insane asylums; the practice of such callings as pharmacy and the supplying of drugs, medicines, and surgical instruments; vaccination, the prevention of epidemics, the combating of venereal diseases, and work against animal diseases and pests; the supervision of slaughter houses and of all places where food is prepared and sold, and a large number of similar activities.

The housing laws, the regulations as to overcrowding, and the many other dwelling and tenement rules and regulations, are sometimes considered a separate police function, but this is hardly logical, as such regulations are directed primarily to the maintenance of sanitary and healthful conditions, and may thus be called a branch of public health work.

*Enforcement of Economic Regulations.* A considerable development of the function of regulating economic affairs in the interests of the public has taken place in Germany during the last few years. Factory regulations, laws on hours of labor, and labor legislation in the widest sense, may be aspects of this function or of the public health function; or, according to their nature, they may be embodiments of social policies that can hardly be considered police functions in any sense.

**Organization of the Police Authorities.** So many of the police functions are matters of internal administration in which the Reich

is concerned, that the central police authority in Germany is very naturally the Minister of the Interior. Some of the functions which have been mentioned in the foregoing pages, however, are supervised by other national Ministers.

The general question, *Does the Reich have police power, or does this power belong only to the states?* cannot arise in Germany. Several Articles of the Constitution<sup>9</sup> bestow upon the Reich the power to legislate concerning particular police functions, and Article 9 provides that insofar as a need exists for the issuing of unified regulations, the Reich possesses legislative power in respect to public welfare and the protection of public order and safety. As the national legislature is the sole judge of the existence of this need, the police power of the Reich is practically unlimited, so far as constitutional restrictions are concerned.

A political limitation, however, appeared in the resistance made by Bavaria to the national criminal police law of 1922,<sup>10</sup> which provided for the establishment of a national police force with its central office at Berlin, under the Minister of the Interior. This force was to combat criminal activities extending over more than one locality or state. The determined opposition to the law led to an agreement by the Cabinet that it should not be enforced.<sup>11</sup>

It is impossible to describe the detailed organization in the Reich and the states, of the agencies which perform the numerous and varied special police functions; particularly since the general type of agency resembles the examples given earlier in this chapter, that is, advisory councils and executive officers, under the direction of the ordinary public authorities in each unit of government. However, the organization of the state police authorities in the narrower sense may be pictured, as it exists in Prussia to-day.<sup>12</sup>

The *central police authority* of this state is the minister of the interior. Other members of the cabinet are in charge of various police functions appropriate to their departments; but the minister of the interior handles the numerous administrative police func-

<sup>9</sup> Articles 6 (No. 3); 7 (Nos. 4, 5, 6, 7, 8, 15, 19, 20); 10 (Nos. 4, 5); 94; 97.

<sup>10</sup> RGBI. 1922, I, p. 593.

<sup>11</sup> See Poetzsch, vom Staatsleben, etc., Jahrbuch d. öff. Rechts der Gegenwart, p. 76 ff.

<sup>12</sup> See de Grais, p. 356 ff.; Lympius, pp. 109-11.

tions which are not assigned elsewhere, and is alone responsible for the functions of security, and assistance to the courts. A special officer in his department is the state commissioner for public order, who is particularly charged with the duty of guarding against attempts to overthrow the republican constitution of Prussia.

The *state police officers* next in rank are the chief administrative officers of the districts, and for some purposes, those of the provinces; that is, the Regierungspräsidenten and the Oberpräsidenten. The former have general charge of almost all branches of police administration within their own administrative districts, while the latter are concerned ordinarily only with affairs involving several administrative districts, or emergency matters. The duty of these officers and of their assistants is to protect against general dangers, and to handle matters which are too difficult or too important for the local police authorities.

The Landrat constitutes a *county police authority*, which has certain powers of direct administration, as in connection with the enforcement of the game laws and the policing of highways; but whose chief function is that of supervising the local police and issuing certain ordinances.

The *local police authorities* are under the control of the chief administrative officer in the rural districts (whose title varies in different provinces), and of the Bürgermeister in cities. The larger cities have a special police department with a separate head. Moreover, the state maintains in a number of large cities its own police agency, to take direct charge of serious or difficult matters.

The *policeman* is a civil servant, who is usually retired after twelve years of active service. He is a state officer, even though locally employed; and the state regulates his rank, salary, etc. Permission may be given by the state authorities, however, for the appointment of local policemen, as officers of the municipality. The usual series of higher police officers, commanders, inspectors, and the like, are in charge of the uniformed force. Special *criminal police* are connected with each police district; there are also state criminal police officers in the provinces.

The former gendarmerie, now the *state troops*, are trained for their duties in special schools. They are under the direction of an administrative office in Berlin, which is immediately responsible

to the state minister of the interior; and supervisory officers for the troops are associated with the various state and county police authorities.

**Police Ordinances and Orders.** The *police ordinance* is a command or prohibition laid upon the general public in the interests of a police function, which has the force of law and the sanction of a penalty for disobedience. Like all other legal ordinances, police ordinances can be issued only on the basis of special legal authorization.

Both national law and the laws of the states bestow such authorizations, which are "partly general, partly special. . . . The Reich, in its numerous assignments of this sort, has authorized the greatest variety of upper and highest national organs, the national consuls, the states, or specified state authorities to issue such penal provisions, mostly of a special nature."<sup>13</sup>

In Prussia the Code of 1794<sup>14</sup> and the Law on Police Administration of 1850<sup>15</sup> bestow this authorization in its main outlines; many other laws from time to time have provided for the issuing of police ordinances in respect to specified matters. A second condition which holds in both the nation and the states is, that each police authority may issue ordinances only for his own district or portions thereof. In general, the consent of the advisory council or committee is required. Ordinances issued by the local police authorities in cities, except security ordinances, must receive the consent of the Bürgermeister or magistracy. Every police ordinance issued in Prussia by the district, province, and state authorities must bear the designation "police ordinance" in its title or introduction, and must be published in the official gazette of the area to which it applies. Subject to statutory exceptions, the minister of the interior may revoke any police ordinances except those which other members of the state cabinet have issued. The Regierungspräsident, with the consent of the district committee, may revoke ordinances issued by the police authorities of the county

<sup>13</sup> Meissner, p. 141.

<sup>14</sup> Allgemeines Landrecht für die Preussischen Staaten, 1794, Section 10, II, 17.

<sup>15</sup> Law of March 11, 1850, *Gesetzsammlung*, p. 265, especially Section 6. See also *Landesverwaltungsgesetz* of July 30, 1883, *Gesetzsammlung*, p. 195.

and the municipality. Police ordinances may not conflict with existing laws or with ordinances issued by a higher authority.

The *police order* differs from the ordinance in that it is addressed to an individual person, or to a specific group of persons. It may be a permission or the refusal of a permission; a command or a prohibition in respect to the performance of certain acts. It need not be in written form; but it must be communicated to the person to whom it applies, and it must be specific, issued by the proper authorities, and based on a law or ordinance. In Prussia any authority which may issue a police ordinance may issue a police order under it; but some states, especially in South Germany, require a special authorization for each.

*Penal police orders* impose a penalty for some act already performed which is punishable by the police authorities; as, for example, a fine for breaking a public health regulation.

Any authority which may issue police ordinances may impose a fine for the violation of the same, up to 150 marks, with imprisonment in case of failure to pay the fine. The general means of enforcing administrative orders are also applicable in case of police orders; that is, performance by a third party at the cost of the person to whom the order was addressed, arrest, fine, and in certain cases imprisonment.<sup>16</sup>

No legal remedies are provided whereby the citizen can attack the police ordinance on general grounds, although he may petition the supervisory authorities to revoke it. When a police order or a penal police order is issued, however, the person to whom it is addressed may attack it before the courts, and in so doing may also attack the legality of the ordinance on which it is based. The courts will examine into the question whether the ordinance was legally issued, and may declare it invalid if they decide in the negative; but they will not take into consideration either its expediency, or the claim that its ostensible motive is not its real motive.<sup>17</sup>

<sup>16</sup> See Sections 115-26 of the Landesverwaltungsgesetz, GS. 1883, pp. 195 ff.; Erl. November 29, 1923 (Ministerialblatt für die Preuss. inn. Verwaltung, p. 1191); ordinance of February 6, 1924 (RGBl. I, p. 44); order of June 30, 1925 (Ministerialblatt f. d. Pr. inn. Ver., p. 747).

<sup>17</sup> See Landesverwaltungsgesetz, cited above, Section 127; also the Law of May 11, 1842, Gesetzsammlung, p. 192; and the ordinance of September 16, 1867 (Gesetzsammlung, p. 1515).

Either of two avenues is open to the citizen who desires to attack a police order. He may bring a complaint before the Landrat, and if dissatisfied with his decision, before the Regierungspräsident. Complaints may be brought directly before the latter, and complaints against his decisions may be laid before the Oberpräsident, when the orders attacked are those of the Landrat or (in general) of the police authorities in cities of more than 10,000 inhabitants. In case the authority to whom the second complaint is made supports the decision of the authority first invoked, a "final formal complaint" may be made to the Superior Administrative Court, on the question whether the order is in accordance with law and was issued with due regard to all legally prescribed formalities and restrictions, but not on the question of personal injury. Complaints against police orders issued directly by the Regierungspräsident are laid before the Oberpräsident; and formal complaints against his decisions lie to the Superior Administrative Court.

The second avenue is the "optional formal complaint" against the police authorities. This may be based only on the claim that the order in question is contrary to law or that it fails to conform with the legal conditions for its issuance. In small cities and rural districts the "optional formal complaint" is brought before the county committee, otherwise before the district committee. Appeal may be taken to the Superior Administrative Court, which may also be asked to review certain cases.

A person against whom a penal police order is issued may go before the ordinary criminal courts asking for a decision as to the legality of the underlying ordinance, on the same grounds described above.

If a court finds a police ordinance invalid, this finding does not serve to revoke the ordinance. The court can merely refuse to apply it in case after case, but it remains formally valid until revoked by the proper police authorities. In other words, the courts have "so-called indirect control in contrast to the direct administrative control."<sup>18</sup>

**Summary and Conclusions.** A very large number of the most important functions of internal administration in Germany are

<sup>18</sup> Hatschek, Lehrbuch, p. 131. See also de Grais, p. 385, note 22.

called by the general name of police functions. Most of those in which the nation directly participates are under the supervisory direction of the national Minister of the Interior, with the regular administrative agents of the states acting as a subordinate hierarchy. In the states themselves a similar organization is found. Only for certain narrowly defined purposes, and for local duties, are police functions performed by police authorities separated from the ordinary administrative authorities. A few special police functions are handled by various ministries. Advisory councils, both the ordinary committees connected with district and local administration, and special agencies for technical matters, coöperate with the police authorities.

General orders having the force of law may be issued by the police authorities insofar as such action is based on legal provisions. These orders are a special kind of legal ordinance known as the *police ordinance*. As a rule they provide a penalty for infraction. They apply only to the area over which the issuing authority has police jurisdiction. A *police order* directs an individual to do something, or to refrain from something, in accordance with a police ordinance; a *penal police order* imposes a penalty upon an individual for failing to observe a police ordinance. The person to whom the police order is addressed may attack it before two or in some cases three instances of the administrative court authorities; the person to whom the penal police order is addressed may attack it before the criminal courts. In both cases the ordinance behind the order may be attacked on the ground that it has no legal basis or that the legal conditions for its issuance were not observed.

It should be realized that the criticism so often directed against the police system in Germany, that it interferes unduly with the rights of the citizen, is hardly justified by the facts. In the first place, many such functions as the construction of public works, fire protection, and the enforcement of factory safety laws, are called police functions in Germany, so that the word police is used much more often than it would be elsewhere, although there is no more interference with personal liberties than in any other modern state. In the second place, although the police authorities issue orders and ordinances in large numbers, all of these must be based



on law, so that they actually represent the will of the people as expressed through the legislature, rather than the caprice of the governing powers. Finally, if the citizen is injured in his rights, if the orders and ordinances are not based on law, or if the legal conditions are not complied with, redress may be sought before the courts, which will protect the individual against any infringement upon his legal rights and liberties.

## CHAPTER XIII

### THE ADMINISTRATION OF JUSTICE

In the old German Empire, the right to establish courts and the right to make judicial decisions belonged to the Emperor and to the judges appointed by him. With the increased powers of the territorial princes, the administration of justice was largely transferred to the great reigning families in the individual states, and in the course of time it came to be considered a function of the state.<sup>1</sup>

The national Constitution of April 16, 1871, listed among the matters "subject to supervision at the hands of the Reich and to the legislation thereof," "general legislation concerning the whole civil law, criminal law, and court procedure."<sup>2</sup> A law of January 27, 1877, governing the constitution of the courts, regulated the courts in a uniform manner.<sup>3</sup> The right to establish courts and the exercise of sovereign rights in the administration of justice, however, with the exception of the highest court of judicature, was left to the individual states. The new Constitution does not change this relationship in any important manner,<sup>4</sup> and the law of 1877, with certain revisions, is still in effect.

The Reich, then, has sovereign powers in the administration of justice; but they are not exclusive, as the states share them through the guarantee of Article 103 of the Constitution, which provides: "The ordinary jurisdiction will be exercised through the Reichsgericht and through the courts of the states." There are, however, several very important limitations upon the powers of the state in respect to the administration of justice, which are contained in various constitutional and legal provisions. These include both

<sup>1</sup> Meissner, Otto. *Das Staatsrecht des Reichs und seiner Länder*, p. 231; de Grais, *Handbuch der Verfassung und Verwaltung*, p. 309.

<sup>2</sup> Constitution of 1871, Article 4, No. 13.

<sup>3</sup> *Gerichtsverfassungsgesetz*; see revision of 1898, *RGBl.* p. 371; latest revision, March 22, 1924, *RGBl.* I, p. 299 ff.

<sup>4</sup> Meissner, pp. 232-33; de Grais, p. 310; Constitution of 1919, Articles 102-08.

limitations upon the jurisdiction of the individual states, and limitations in respect to judicial administration.

It is an interesting fact that a principle of great importance, universally accepted as a limitation upon the states in this connection, is nowhere expressly propounded in the national Constitution or laws.<sup>5</sup> This is the principle that in case of a conflict of jurisdiction, either formal or material, between the Reich and the individual states, the latter must yield. It is true that this dictum may be considered a logical consequence, or more properly a corollary, of the constitutional provision that "National law overrules state law";<sup>6</sup> and that it follows necessarily from the organization of state and national courts into a hierarchy, with appeals passing up under certain conditions through a series of instances to the highest national courts; nevertheless, the principle as such is not expressed, although it is in effective operation.

The Constitution places a fundamental limitation on the state's control over the administration of justice, through the provision that, "the Reich has power to legislate . . . concerning judicial procedure, including the execution of sentences; also in regard to official coöperation among public authorities."<sup>7</sup> It limits the states as well as the Reich, in forbidding exceptional courts and providing that no one may be withdrawn from his rightful judge.<sup>8</sup>

The law governing the constitution of the courts,<sup>9</sup> by providing for a unified judicial system, seriously limits the powers of the states. This is inevitable if a uniform and equal system is to prevail. The important features of the system of judicial administration established by this law may be said to be:

The abolition of the private administration of justice, including the right to presentation for employment in the courts; and of the exercise of spiritual jurisdiction in secular affairs, including marriages and betrothals. The administration of justice is thereby established as a wholly public function.<sup>10</sup>

<sup>5</sup> For a discussion of this point, see Hatschek, *Deutsches und preussisches Staatsrecht*, 1923, Vol. II, pp. 560-68.

<sup>6</sup> Constitution, Article 13.

<sup>7</sup> Article 7, No. 3.

<sup>8</sup> Article 105.

<sup>9</sup> For the latest version of the law, see *Gerichtsverfassung*, as published on March 22, 1924, *RGBl. I*, 299 ff.

<sup>10</sup> *Gerichtsverfassungsgesetz*, Section 15. Hereafter cited as *GVG*.

The fact that the national legislature fixes educational qualifications for the judicial office and the conditions under which judges shall be appointed, establishes their tenure of office, and specifies the conditions under which they may be removed, thus insuring their independence. Moreover, the Constitution as well as the law provides that the judges are to be independent and subordinate only to the law.<sup>11</sup> This precludes the possibility of subordinating the courts to administrative authorities by the state, and places them in a position of independence guaranteed by the Reich.

The provision by national law for unity in the administration of justice, and equality in procedure, by the organization of the office of prosecuting attorney, the establishment of the relationship of such officers to the courts, the establishment and organization of court clerks, and the regulation of the summoning and executory officers of the courts.<sup>12</sup>

The provision that the procedure of the courts is to be regulated by national legislation.<sup>13</sup>

The organization of a hierarchy of ordinary courts for the whole Reich, and the establishment of their competence by the Reich both in respect to territory and in respect to subject matter.<sup>14</sup>

Dr. Meissner admirably summarizes the relation of the states to the Reich in the administration of justice, in saying: <sup>15</sup>

"The exercise of adjudication by the states is effected, indeed, by virtue of their own sovereign rights and in the name of their own administration, yet the states do not exercise this right in an isolated manner, but as members of a higher unity; they are bound in the exercise of their authority by the general provisions given by the national power. This constitutional principle expresses itself in two directions; the constitutional effect of a decision of any federal court is not limited to the federal state, but reaches the whole territory of the German Reich; thus each individual state exercises a jurisdiction with an effect upon the whole national territory; the efficacy of judicial decisions is not conditioned by the fact that the persons concerned find themselves in the federal state; all judgments, decisions and orders of a court are as effective for the whole territory of the Reich as for the territory of the federal state itself, to which the court belongs. The above mentioned maxim, that the states exercise jurisdiction only as members of the united Reich, expresses itself in the second place in the fact that for the purpose of guaranteeing an equal and consistent interpretation and application of the law, jurisdiction in the final instance is

<sup>11</sup> Article 102; GVG. Section 1.

<sup>12</sup> GVG. Section 141 ff.

<sup>13</sup> Zivilprozessordnung und Strafprozessordnung.

<sup>14</sup> Gerichtsverfassungsgesetz, *passim*. See Hatschek, p. 569 ff.

<sup>15</sup> *Op. cit.*, p. 233.

given over to the highest court of judicature, to the Reich itself; the adjudication of the states is governed by the adjudication of the Reich; although the Reich has not reserved to itself in all cases the right of judgment in the last instance, but has rather made certain conditions binding upon this right, by regulating the legal remedies, yet it is a fundamental principle that the administration of justice in the highest instance belongs to the Reich.

**Substantive Law.** The civil law of Germany was carefully codified in 1896.<sup>16</sup> Though it is not all inclusive,<sup>17</sup> particularly since state laws and common or customary law may supplement it, and though many subsequent amendments have been made, this civil code is still basic. It is generally admired as an outstanding example of codification, and has been called "the most carefully worded and — scientifically arranged code extant."<sup>18</sup>

The code of criminal law which still prevails in Germany was established in 1871 and revised in 1876.<sup>19</sup> A business code was issued in 1897.<sup>20</sup> The provisions of all these codes (particularly the last mentioned, as being most uncommon) are of great interest to the student of modern legislation.

**The Judicial System in General.** The court system of Germany consists of four different kinds of courts: the ordinary, the special, the administrative, and the Staatsgerichtshof, a court established for the settlement of constitutional questions.

<sup>16</sup> Bürgerliches Gesetzbuch für das deutsche Reich, August 18, 1896 (RGBl., p. 195). For amendments see RGBl. 1908, p. 151 ff., Section 72; p. 313 ff., Section 833; RGBl. 1915, p. 327 ff., Sections 573, 574, 1123, 1124; RGBl. 1919, p. 72 ff., Sections 1012-1017; RGBl. 1922, I, p. 633 ff., Sections 48, 1783, 1784, 1786, 1887; RGBl. 1923, I, p. 163 ff., Section 247; p. 411 ff., Sections 1642, 1811; RGBl. 1924, I, p. 135 ff., Article IV, Sections 209, 210, 212, 213.

<sup>17</sup> On this point, see Schuster, The principles of German civil law, p. 6.

<sup>18</sup> Preface to the English translation of the German Civil Code, by Dr. — Chung Hui Wang, London, 1907.

<sup>19</sup> Strafgesetzbuch für das Deutsche Reich, law of May 15, 1871. See RGBl. 1876, p. 40. The subsequent alterations are so numerous as to make a complete list impossible here. An English version with amendments to June, 1912, was prepared by Gage, Capt. R. H., and Waters, A. J., and published by Hortor & Co. of Johannesburg in 1917. A German version, with careful annotations by Dr. Reinhard Frank, which reached its 16th edition in 1925, is very helpful to the student.

<sup>20</sup> Handelsgesetzbuch, RGBl. 1897, p. 219. A convenient, small edition, with notes by Lithauer and Mosse, was published by Guttentag in Berlin in 1911. An English translation by Bernard A. Platt, "The German commercial-code," appeared in 1900.

*Ordinary Courts.* According to Article 103 of the Constitution, ordinary jurisdiction is exercised by the Reichsgericht (which may be called a national supreme court of ordinary jurisdiction, though it is not the only national court of final instance) and by the courts of the states. The law governing the constitution of the courts provides that ordinary jurisdiction is to be exercised through the district courts,<sup>21</sup> the state courts, the superior state courts, and the Reichsgericht. The jurisdiction of the ordinary courts includes "all civil cases and criminal affairs, for which neither the competence of the administrative authorities or administrative courts is established, nor special courts are established or permitted by national law."<sup>22</sup> It will be noticed that there is no such definite separation of state courts and national courts as is found in the United States; the Reichsgericht, though charged with many special functions as a supreme court, is also the apex of the ordinary court system, the base of which is the district courts.

*Special Courts.* Certain matters, both civil and criminal, have been given over to the jurisdiction of special courts. Some of these courts have been created by the Reich and some by the states. Many of them have been described elsewhere in this book. In general there is little in their administration of such unusual nature or exceptional interest as to warrant detailed study at this point; particularly since as a rule their procedure is governed by certain sections (specified in the laws or ordinances creating them) of the civil or the criminal process code. Among the most important special national courts now in existence are:<sup>23</sup>

1. The extraordinary courts established under Article 48 of the Constitution.<sup>24</sup>

<sup>21</sup> GVG. Section 12. The courts are: Amtsgerichte, Landgerichte, Oberlandesgerichte, and the Reichsgericht. There is no English equivalent for Amtsgerichte, which is variously rendered by several translators. In using the expression, district courts, the present writers intend to convey the idea that these courts serve small judicial districts; yet municipal courts would not be a correct name for them. Above these stand the lower state courts, which correspond roughly to county courts in the United States; then the superior state courts.

<sup>22</sup> GVG. Section 13.

<sup>23</sup> Until July 23, 1927, there was a high court of state for the protection of the Republic. Its functions are now exercised by the Reichsgericht, and will later be transferred to the national administrative court when this is established. See RGBL. 1927, I, p. 125. For an exhaustive list of special national courts, see Stier-Somlo, Reichs- und Landesstaatsrecht, Vol. I, p. 708 ff.

<sup>24</sup> See Chapter IV.

2. The mixed courts of arbitration in accordance with the Treaty of Versailles.<sup>25</sup>
3. The national court of arbitration for the decision of controversies as to the salary codes of states and localities.<sup>26</sup>
4. Labor courts.<sup>27</sup>

The law governing the constitution of the courts permits the establishment or the continuance of certain special courts. This authorization has been employed by the states to a considerable extent. The special courts named by the law are:<sup>28</sup>

1. Shipping courts for the Rhine and the Elbe.
2. Courts to handle cases involving the dissolution of franchises or privileges.
3. Commercial courts for specified minor cases.
4. Trade courts.<sup>29</sup>

**Labor Courts.** Both the importance of the material jurisdiction involved and the interesting procedure warrant a brief discussion of the new system of labor courts in Germany, which became effective on July 1, 1927. In the district of every ordinary district court an independent labor court is established. Above the district labor courts are state labor courts and a National Labor Court. The labor courts have exclusive jurisdiction in a specified list of cases, particularly civil suits between employers and employees arising out of their mutual relationships in these capacities; also between fellow employees.

The lowest labor court sits in chambers, each of which is under the chairmanship of a judge or a person qualified for the judicial office, possessed of "knowledge and experience in labor legislation and social problems." The chairman is assisted by one person who

<sup>25</sup> See Chapter VI.

<sup>26</sup> See Chapter VI; also RGBl. 1920, p. 2117.

<sup>27</sup> See law of December 23, 1926; RGBl. I, p. 507. This Arbeitsgerichtsgesetz will be cited as Agg. For a fuller discussion than is possible here, see Blachly and Oatman, The New Labor Courts in Germany, in *Southwestern Political and Social Science Quarterly*, June, 1928.

<sup>28</sup> GVG. Section 14. See also de Grais, p. 273 ff.

<sup>29</sup> Trade courts have now been replaced by labor courts; and the trade court law (Gewerbegerichtsgesetz, first passed in 1890, republished in RGBl. 1901, p. 353; several times amended) is repealed by the law on labor courts, as is GVG. Section 14, No. 4, permitting trade courts. See Agg. Section 110. The same section repeals the law of 1904 (RGBl. p. 266) permitting the establishment of mercantile courts (Kaufmannsgerichtsgesetz).

represents the employer class and one who represents the working class. Procedure is very informal; the chairman rules on all technical points, and the function of the assistants is to aid in bringing out the facts and in arriving at the judgment.<sup>31</sup> The law forbids representation by attorneys before the lowest labor courts, a fact which has caused much unfavorable criticism; yet which is defended on the ground that the simple procedure without pleading, but with the possibility of bringing forward all relevant evidence, is not only sufficient to establish the facts, but also saves the poor man's money and prevents the greater wealth of the employer from giving him an advantage in the securing of more skilled council.<sup>32</sup> Personal appearance of the parties is required, or judgment may go by default. However, legal persons may of course be represented. The costs are fixed by law on a very low sliding scale, beginning with one mark when the value of the claim is not more than twenty marks.<sup>33</sup>

Both before the hearing and at all times during its progress, efforts are to be made to bring about a friendly adjustment. If this cannot be done, the court enters judgment, which is executable like the judgment of any other court.<sup>34</sup>

The ordinary legal remedy against judgments of the labor court is the petition, though under certain conditions the appeal is used.<sup>35</sup> Petitions to the state labor courts are allowed if the value of the object of suit as established in the judgment of the labor court is more than three hundred marks, or if the labor court in its judgment has especially permitted this legal remedy because of the fundamental importance of the issue. When the value involved would suffice for review in other civil suits, or when the state labor court in its judgment on the petition has allowed review because of the fundamental importance of the issue, the case may come before the National Labor Court for review, provided that sufficient grounds exist.<sup>36</sup> Cases may come directly to the National Labor Court for review, when the amount at issue is sufficient and the op-

<sup>31</sup> Agg. Sections 14-20, 46-71.

<sup>32</sup> Agg. Section 11. See several discussions of various aspects of the law in *Juristische Wochenschrift* of January 22, 1927.

<sup>33</sup> Agg. Section 12.

<sup>34</sup> For stay of execution under certain conditions, etc., see Agg. Sections 62, 63.

<sup>35</sup> Agg. Section 78.

<sup>36</sup> Agg. Sections 64, 72.



posing party agrees to the motion for review, or the national Minister of Labor declares that an immediate settlement of the legal controversy is needed in the interests of the public.<sup>37</sup>

The state labor courts are connected with the regular state courts. Their chambers are organized much as are those of the lower labor courts. The National Labor Court, which is connected with the Reichsgericht, sits in senates composed of a senate president as chairman, councillors of the Reichsgericht, and equal numbers of persons from the employer class and from the working class. The chairmen and judicial members of senates and chambers of these courts are required, like the chairmen of chambers in the lowest labor courts, to possess knowledge and experience in social problems and labor legislation.<sup>38</sup> Procedure before these courts requires the representation of the parties by lawyers.<sup>39</sup>

Certain cases involving disputes as to matters of fact (elections to occupational representative bodies, questions as to the violation of standards in the appointment of employees, etc.) are tried by a procedure quite similar to that described above, but which terminates not in a judgment, but in a decision or verdict.

Appeals against such decisions may be taken to the state labor courts; or if the enterprise concerned extends beyond the boundaries of a single state, or if the Reich has supervisory power over the official status of the employees, such appeals may be taken directly to the Reichsgericht. No further legal remedy is allowed against the decision on appeal.<sup>40</sup>

The labor law also provides for the amicable settlement of controversies by agencies mutually agreed upon, or for the decision of questions of fact by arbitrators.<sup>41</sup>

No estimate is yet possible of an institution so recently put into operation. The most that can be said is, that since it embodies the results of long experience with trade courts and labor tribunals, there is much reason to hope that it will prove to be a step in advance.

<sup>37</sup> Agg. Section 76.

<sup>38</sup> Agg. Sections 5, 36, 41, 42.

<sup>39</sup> Agg. Section 11.

<sup>40</sup> Agg. Sections 80-89.

<sup>41</sup> Agg. Sections 101-07.

**Administrative Courts.** Article 107 of the Constitution reads as follows: "In the Reich and in the states there must exist, in accordance with legal provisions, administrative courts for the protection of individuals against orders and decrees of the administrative authorities." That this article contemplates the creation of a national administrative court of highest judicature, is indicated by references in two other Articles (31 and 166) to such a court. However, no general administrative court for the Reich has yet been established, although a number of special national administrative courts care for particular administrative questions. Many of these have been described in other parts of this book in connection with the functions which they serve. Among them are the National Insurance Office; the National Supervisory Office for Private Insurance; the National Economic Court; the National Finance Court and the lower finance courts; the National Settlement Court and the lower settlement courts, for claims of those injured in war; the National Patent Office; the Higher Court of Arbitration and the courts of arbitration, for cases concerning employees' insurance; and the National Office for Public Relief Agencies.

There is no national code binding upon the states, establishing a common system of administrative court jurisdiction, or organizing the administrative courts after a common plan.<sup>42</sup> Each state establishes its own system of courts. Prussia, in particular, has a very elaborate administrative court system. Because of the extent of the subject, administrative judicature will be discussed later in a separate chapter.

**The High Court of State.** In addition to the courts above mentioned there is the Staatsgerichtshof, which is neither a court of ordinary jurisdiction, a special court, nor an administrative court, but a court for the interpretation of the national Constitution and the settlement of constitutional difficulties between the states and the Reich.

**Organization of the Ordinary Court System.** As has been pointed out before, the ordinary court system consists of a hierarchy of four kinds of courts, the district courts, the state courts, the

<sup>42</sup> See J. Von Elbe, *Die Verwaltungsgerichtsbarkeit nach den Gesetzen der deutschen Länder*, p. 60 *et passim*.

superior state courts, and the Reichsgericht. Though each state may establish a complete and independent system of courts following the provisions of the national law, it is not obligatory upon it to do so, since states may unite by means of treaties for the common administration of justice, and for this purpose may establish common courts. This power, which is considered an attribute of the sovereignty still possessed by the states, has been employed in a number of cases. Thus, the administration of justice in the former principality of Waldeck is carried on by the Prussian courts, the former principality of Birkenfeld belonging to Oldenburg is under the jurisdiction of the Prussian state court at Coblenz, and the former principality Schwarzburg-Sonderhausen is under the jurisdiction of the Prussian state court at Erfurt. Two counties in Prussia and three in Thuringia are placed under the jurisdiction of a common state court in Meiningen. Thuringia and Prussia have established a common superior state court at Jena; Prussia and Württemberg have established a common state court at Hechingen; and the three Hanseatic city-states, Hamburg, Bremen, and Lübeck, have a common superior state court at Hamburg.<sup>43</sup>

**District Courts.** The lowest courts in the judicial hierarchy are the district courts. A district court consists of an individual judge, who at the same time may be a member or director of the superior state court. The general supervision of the district courts can be assigned by the state department of justice to the president of the superior state court. Where this does not take place, in case the district court has several judges the duty of general supervision may be assigned by the state department of justice to one of them; but if the number of judges is more than fifteen, this duty may be divided among several. Each district judge despatches individually the business given over to him, in so far as the law does not provide otherwise.<sup>44</sup>

In civil affairs the district courts are competent (except as the law may refer certain matters, regardless of value, to the state courts) for claims involving property up to five hundred marks; rent, labor, and conveyance suits; controversies as to defective live-

<sup>43</sup> Many other examples of similar nature might be cited. Meissner, pp. 232-33; Hatschek, Vol. II, p. 578 ff.

<sup>44</sup> GVG. Section 22.

stock, or damages done by game; various domestic and personal claims, including claims for support; claims arising in connection with real estate transfers, as to dower rights and the like; "public notice procedure" (to bar certain legal claims); summons, the issue of orders to pay, seizures or arrests, and temporary orders.<sup>45</sup> They also direct compulsory execution and bankruptcy proceedings. Under their supervision are such matters as the register of landed property, guardianship, and a number of affairs of voluntary jurisdiction.<sup>46</sup>

In criminal matters the district courts are competent for: "

Trespass.

Misdemeanor.

A considerable list of crimes, including such as involve penal servitude up to ten years.

In cases involving trespass the district judge decides alone. In misdemeanors he decides alone when the affair is private; when the act and any other offence connected with it involve no more than six months imprisonment; and under certain other conditions.<sup>48</sup>

In cases where the district judge does not decide alone he is assisted by two lay justices, of whom one must be of the male sex. The three persons, sitting together, form the "lay court." The lay members correspond in a general way to jurors, being chosen each year from a list of eligible residents of the district served by the court; but they act as judges. In other words, unless special exceptions are made by law, the lay justices exercise the same rights and to the same extent as the district judge, including the right to vote on all matters that arise incidentally in connection with the trial, and to participate in making the decision. A second district judge is permissible on demand by the prosecuting attorney in the presentation of the indictment. The prosecuting attorney should

<sup>45</sup> GVG. Section 23. Zivilprozessordnung, Sections 689, 919, 942. Cited hereafter as ZPO. Since the law on labor courts gives these courts exclusive jurisdiction in the class of suits summarized in the text as "labor" suits, it is doubtful whether this particular paragraph of the law on the organization of the courts (Section 23, No. 2, par. 4) is still valid, although it has not been specifically repealed.

<sup>46</sup> GVG. Section 23; ZPO, Sections 689, 919, 942; de Grais, p. 314.

<sup>47</sup> GVG. Section 24.

<sup>48</sup> GVG. Section 25.

only demand this, however, if the inclusion of a second judge seems necessary in the case.<sup>49</sup>

The juvenile courts deviate slightly from the district courts. They decide all criminal cases involving persons who at the time of the bringing in of the complaint are over fourteen and not more than eighteen years of age. They decide when the offence is serious, in sittings of two judges and three lay justices.<sup>50</sup>

**State Courts.** The state courts are composed of a president and the necessary number of directors and members. The appointment of directors may be dispensed with in case the president is able to hold the chairmanship in the chambers alone. The directors and the members of the court may also at the same time be district judges within the district of the state court.<sup>51</sup>

In the state court, both civil and criminal chambers are established. The state department of justice may appoint investigating judges, according to requirements, for one year of service.<sup>52</sup>

The president has the chairmanship in the full sessions of the court, while that in the chambers is held by the president and the directors. An ordinary member of the state court may also hold the chairmanship in the chamber for slight criminal offences. He is selected by the presiding officer for the term of a year. Before the beginning of the business year the president determines upon the chamber over which he will preside. The chairmanship in the other chambers is settled by a majority vote of the president and the directors. Before the beginning of the business year, also, matters before the court are divided among the different chambers, and the members of the individual chambers as well as their representatives are selected. Each member of the court may be a member of several chambers. The orders providing for the division of business among the chambers and the membership of each chamber are issued by the presidency, which consists of the president and the two oldest members.<sup>53</sup> Within the chambers, the chairman divides the business among the members.<sup>54</sup>

<sup>49</sup> GVG. Sections 28 and 29.

<sup>50</sup> Jugendgerichtsgesetz of February 16, 1923, RGBl. I, p. 135, with corrections, p. 152.

<sup>51</sup> GVG. Section 59.

<sup>52</sup> GVG. Sections 60, 61.

<sup>53</sup> GVG. Sections 62-64.

<sup>54</sup> GVG. Section 69.

The civil chambers of the court decide all civil suits which are not assigned to the district court. These chambers are competent to deal with claims, regardless of amount, which may be brought against the national exchequer under the law of officers; or claims against national officers who have exceeded their official powers or have neglected their official duties. The state legislature may assign exclusively to the state court: claims of the state officers against the state; claims against the state on account of the decrees of administrative authorities, on account of injuries committed by state officers, and on account of the abolition of privileges; claims against state officers who have exceeded their official powers or have neglected their official duties; as well as claims in respect to public expenditures, regardless of amount.<sup>55</sup>

The civil chambers, including the chambers for trade affairs, are the courts for appeals and complaints in civil suits tried before the district courts.<sup>56</sup>

The criminal chambers make the decisions respecting preliminary investigations and their results, which are to be issued by the courts according to the provisions of the Code for Criminal Procedure.<sup>57</sup> They also handle any other matters assigned to them by this code. They decide in regard to complaints against decrees of investigating judges and of district judges, as well as against decisions of the district judges and the lay courts. They may take cognizance of cases which come to them on appeal from decisions of the district court and the lay court. An appeal brought against the decision of a district judge is decided by the so-called small criminal chamber, composed of a judge as chairman, and two lay justices. The so-called great criminal chamber, composed of three judges (including the chairman) and two lay justices, decides appeals against decisions of a lay court. Decisions are made, outside of the main hearing, by a bench of three judges, including the chairman.<sup>58</sup>

Where the distance between courts is great, the state department of justice may establish a criminal chamber in connection with a district court for the district of one or more district courts; and may assign to it within its own district the entire activity of the

<sup>55</sup> GVG. Section 71.

<sup>56</sup> GVG. Section 72.

<sup>57</sup> Strafprozessordnung, cited hereafter as SPO.

<sup>58</sup> GVG. Section 73-76.

criminal chamber of the state court or a part of its activity. Such a criminal chamber is constituted of members of the state court, or district judges of the district for which the chamber is established.<sup>59</sup>

*Jury Courts of the State Courts.* For the trial and decision of criminal cases which do not belong before the Reichsgericht or the district court, jury courts may be established as needed in connection with the state courts. These courts consist of three judges (including the chairman) and six jurors. The judges and the jurors act as one body in reaching joint decisions upon questions of guilt and punishment; during the chief trial the jurors exercise the judicial office to the same extent as the lay justices. The state department of justice can provide that the districts of several state courts shall be consolidated into a jury court district, and that the sittings of the jury court shall be held in one of the state courts. The professional members of the jury court are appointed from among the judges employed within the entire district of the jury court.<sup>60</sup>

*Chambers of the State Courts for Commercial Affairs.* If the department of justice of a state considers it necessary, it may establish chambers to handle commercial affairs in connection with the state courts, either for their districts or for local subdivisions. Such chambers may be located at different places from those where the state courts sit. If such a chamber is established, commercial suits are tried in it, in accordance with certain special provisions given in the law. These courts make decisions in sittings in which a member of the state court acts as chairman and two commercial judges participate; in certain cases a single judge decides. The commercial judges are nominated by the representative organs of the commercial classes, for a period of three years. The office is an honorary one.<sup>61</sup>

*Superior State Courts.* The superior state courts, in which are established both civil and criminal chambers, are composed of a president and the necessary number of senate presidents and councillors. The same provisions regarding the organization of the

<sup>59</sup> GVG. Section 78.

<sup>60</sup> GVG. Sections 79-92, for the provisions governing the Jury Court.

<sup>61</sup> GVG. Sections 93-114. See also the trade code (Handelsgesetzbuch) RGBI. 1897, p. 219, with many amendments.



chambers and the division of business are applicable to them as to the state courts, except that the two oldest members of the superior state court are always to be included in the presidency. The superior state courts are competent in civil affairs for trial and decision concerning :

Appeals against the final decisions of the state courts.  
Formal complaints against the decisions of state courts.<sup>62</sup>

In criminal affairs the superior state courts are competent for the trial and decision in the first and last instances, of cases which have been given by the national prosecuting attorney to the state prosecuting attorney, or of cases assigned to them by the Reichsgericht involving treason against the state or treason in respect to military secrecy.<sup>63</sup>

The general provisions regarding jurisdiction are valid in these cases. If, however, several superior state courts are established in one state, the functions assigned by law to the superior state court may be given over by the state department of justice to one or several of these courts or to the highest state court. Through an agreement of the state departments of justice concerned, the functions may be given over to the court of one state, for the territory of another state.<sup>64</sup>

The superior state courts are competent in criminal affairs for trial and decision regarding the following legal remedies :

1. Review as against :

The decisions of the district court not contestable by appeal ;

The decisions of the smaller criminal chambers ;

The decisions of great criminal chambers ; when in the first instance a lay court has decided ; and

The decisions of great criminal chambers and jury courts, when the review is based exclusively upon the violation of a legal norm contained in the state laws.

2. The formal complaint against criminal court decisions, in so far as the competence of the criminal chamber or of the Reichsgericht is not established.<sup>65</sup> Unless the law requires the decision to

<sup>62</sup> GVG. Sections 115-19.

<sup>63</sup> GVG. Sections 120 ; 134, paragraph 2 ; 73, paragraph 1.

<sup>64</sup> GVG. Section 120.

<sup>65</sup> GVG. Section 121.



be made by a single judge, the senates of the superior state courts decide cases in sittings of three members including the chairman. In the principal trial of the first instance, the criminal senates are composed of five members, including the chairman.<sup>65</sup>

**The Reichsgericht.** The Reichsgericht, located at Leipzig, is composed of a president and the necessary number of senate presidents and councillors, who are appointed by the national President upon the proposal of the Reichsrat. Only those may be appointed to this court who possess the qualifications for the judicial office in a German state, and who are at least thirty-five years old.<sup>67</sup>

The national Minister of Justice determines upon the number of civil and criminal chambers that are to be established. The same provisions regarding appointment to chambers and distribution of business find application here as in respect to the state courts, except that the four oldest members of the court become members of the presidency.<sup>68</sup>

In civil cases the Reichsgericht is competent to try and to decide reviews of the final decisions of the superior state courts; and of final decisions in the first instance of the state courts, under specified conditions. It also decides upon formal complaints against decisions of the superior state courts which refuse to permit appeals.<sup>69</sup>

In certain cases involving voluntary adjudication, the Reichsgericht decides on the interpretation of national legal provisions when a superior state court wishes to deviate in its interpretation from the decision of another superior state court.<sup>70</sup>

The criminal senate decides in the first and final instance in cases involving high treason, treason against a state, and treason in time of war against the Reich, as well as crimes treasonable in nature concerning military secrecy. As has been noted above, some of these cases may be assigned to the superior state court.<sup>71</sup>

In criminal affairs the Reichsgericht is competent for the trial and decision of cases involving reviews of decisions of the jury

<sup>65</sup> GVG. Section 122.

<sup>67</sup> GVG. Sections 124, 125. A law of April 11, 1877, RGBL. p. 415, established the location of the Reichsgericht.

<sup>68</sup> Sections 130, 131.

<sup>69</sup> GVG. Section 133; Zivilprozessordnung, Sections 519b, 566a, 568; Law of December 21, 1925, RGBL. I, 475.

<sup>70</sup> Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit of May 17, 1898, Section 28, RGBL. p. 189.

<sup>71</sup> GVG. Section 134; RGBL. 1926, I, 190.

court and the great criminal chambers, which are not handled by the superior state court.<sup>72</sup>

If in a legal question a civil senate differs from the decision of another civil senate or the combined civil senates, or a criminal senate differs from the decision of another criminal senate or the combined criminal senates, the point must be decided by the combined civil senates or criminal senates, respectively. In other specified instances a decision of the plenum, or entire court, is required. The decision of a question of law by the united senates or the plenum is binding in the case to be decided.<sup>73</sup> In this manner a unified and consistent interpretation of the law is secured, except in respect to such matters as are definitely given to the exclusive competence of other courts.

The senates of the Reichsgericht decide cases in sittings of five members including the chairman. The criminal senates make their decisions, except for the main trial, in sittings of three members including the chairman.<sup>74</sup>

**The Judges.** National law, supplemented by state law in some respects, governs the educational qualifications, preparatory service, examinations, term, salary relationships, removal, and retirement of judges. It is the theory of the German legal system that judges should be professionally trained for their work and should make of it a life profession. To this end the law is directed.<sup>75</sup>

The period of training required to fit a candidate for the judicial office is six years, of which three must be spent in university study and three in a sort of practical apprenticeship.<sup>76</sup> A severe examination is given at the end of the university course; if the student passes this, he receives the title of referendar<sup>77</sup> and enters upon the practical side of his training. He acts in the capacity of general assistant to the person to whose office he is assigned, and each such person is expected to instruct him and to give a written estimate of his work and his qualifications as a prospective jurist. The offices where each referendar must serve for periods varying from two to

<sup>72</sup> GVG. Section 135.

<sup>73</sup> GVG. Section 136.

<sup>74</sup> GVG. Section 139, as amended RGBI. 1926, I, 190.

<sup>75</sup> GVG. Sections 2-II.

<sup>76</sup> GVG, Section 2.

<sup>77</sup> There is no equivalent of this title in English.

eight months include: the prosecuting attorney's office connected with a district court; the civil chamber and the criminal chamber, successively, of a district court; a state court; the administrative department of a district court (bankruptcy, guardianship, land registration, and the like); the office of a practicing attorney; and the superior state court. At the conclusion of this practical experience the candidate must pass a second examination, under the auspices of the state department of justice. This examination, like the first, includes a variety of written work and a severe oral inquisition. A successful completion of the second examination is rewarded by the title of assessor.<sup>78</sup> The assessor may enter upon private practice, after being officially enrolled on the district register of attorneys; or he may secure an appointment as deputy judge as the first step to working himself upward in the judicial profession. He may later become a judge of the district court, then of the state court, and so on; or he may become the prosecuting attorney connected with a court. It should be noted that candidates for bench and for bar have received identical training; hence it is possible for a lawyer to become a judge and vice versa, so far as legal qualifications are concerned; but in practice this almost never happens. Ordinarily the judge who presides over a high court, instead of being appointed from among members of the bar, has risen step by step in judicial practice.<sup>79</sup>

Although the state, rather than the Reich, actually gives the qualifying examination for the judicial office, yet the uniformity of educational standards<sup>80</sup> in the German universities, and the requirement of the national law<sup>81</sup> that preparation in one state shall

<sup>78</sup> This title also is without an English equivalent. "Assistant judge," as it is translated by most dictionaries, is unsatisfactory, since the status of assessor is really only that of one who has qualified for the judicial status, or for the bar.

<sup>79</sup> "Any regular public teacher of law in a German University is qualified for the judicial office." GVG. Section 4. It quite often happens that a member of the judiciary teaches law in a University at some time during his career. Many examples might be given from among important German jurists of the present day. To cite a single one, the distinguished President of the Prussian Oberverwaltungsgericht, Dr. Bill Drews, who kindly described his training and experience to the writers in the course of a personal interview, was at one time a professor of law.

<sup>80</sup> See Chapter XV.

<sup>81</sup> GVG. Sections 2-5, especially Section 3.

be accredited in all others, result in a practical uniformity of education. The provision that any person (unless exceptions are especially made by the law) who has qualified for the judicial office in one state is eligible to any judicial office in the Reich,<sup>82</sup> is in a sense made possible by similarity of training. The results are, to make judicial standards national in character, and to aid in that uniform and equal administration of justice throughout the Reich, which is the object of the highly developed, intricately organized, and elaborately codified system.

The states are permitted to add to the educational qualifications set forth in the national law, or to assign the registrar to the service of the administrative authorities for not more than one year in the second or practical period of his education.<sup>83</sup> This is a valuable method of coördinating the administration of justice with the work of public administration in general, and is of especial significance since many of the higher national administrative positions are open only to persons with the qualifications for the judicial office. In Prussia the earlier education of those who desire to enter upon a career in state administration is identical with that of candidates for the judicial office, and divergencies in training do not appear until after the close of the university course and the passing of the first examination.<sup>84</sup>

Judges are appointed for life. They may not be removed from office, transferred, or retired, against their will, except on the basis of a judicial decision on the grounds and under the forms established by law. In case of reorganization of the courts or of the judicial districts involuntary transfers or removals may be made, but the judge must receive his full salary. Salaries are fixed by

<sup>82</sup> GVG. Section 5.

<sup>83</sup> GVG. Section 2, par. 4.

<sup>84</sup> See two interesting articles dealing respectively with juristic and administrative educational requirements in Prussia, in *Juristische Wochenschrift*, January 1, 1927, p. 2 ff. Other valuable papers in the same number of the *J. W.* discuss the requirements for the judicial office in Baden, Thuringia, and Brunswick, as well as certain general questions of judicial education. For Bavaria, see *J. W.* for April 15, 1926, p. 577. On all the above topics and some other states also, see *J. W.* for January 1, 1926. An excellent article by O. C. Kniep, entitled "Legal education in Germany," to which the authors are indebted for several points, is found in the *American Law School Review* for May, 1925, Vol. 5, No. 9, p. 505 ff.

law, and additional fees are not permitted. Legal redress may be sought by the judge in case his legal rights are impaired.<sup>85</sup>

Both the Constitution and the national law provide that the judicial power is exercised by independent courts, subordinate only to law.<sup>86</sup> The independence guaranteed in this constitutional provision signifies independence from governmental direction. Although the administrative authorities, such as the national Minister of Justice and the state departments of justice, have to supervise the proper conduct of judicial business, they may not interfere in any way with the so-called judicial activity; that is, the making of decisions. Independence signifies also freedom from official orders by a superior authority. "No official orders can prescribe to the judge, how he has to make decisions."<sup>87</sup>

A certain independence of the judges exists also in respect to the legislative organ. Although judges are "subordinate to the law," this is interpreted to mean acts legislative in nature. Any other expressions of the will of the legislative authority which seek to influence the administration of justice are unconstitutional and may be disregarded by the judge.<sup>87</sup>

Through these arrangements, the attempt is made to secure judges possessing an adequate theoretical and practical training; free from a bias in favor of special interests, since they are not selected from among practicing attorneys but from among persons trained in the service of the state; free from partisan control, since they have a life tenure, a good salary and pension rights; and, finally, independent from both the political control of the legislature and the orders of the administrative branch of the government.

As a result, when the courts touch upon the field of administration, as they do in many instances, they may stand firm against the administrative authorities, to whom they are not subordinate; yet their situation is so independent that such opposition will not be arbitrary or partisan. The bench is in a peculiarly favorable position to guard public interests against attacks by special economic interests, as the judges are not only placed beyond the reach of economic controls by virtue of their position, but are

<sup>85</sup> GVG. Sections 6-9. These provisions do not apply to commercial judges, lay justices, and jurors (Section 11). Provisions of state law as to the temporary exercise of judicial powers are not affected (Section 10).

<sup>86</sup> GVG. Section 1, Constitution, Article 102.

<sup>87</sup> Anschütz, note to Article 102.

enabled by their training to look upon problems quite as much from the viewpoint of public welfare as from the viewpoint of private interests.

**The Public Prosecutors.** In every court there is a prosecuting attorney. This office is exercised:

In the Reichsgericht by the Attorney General (Oberreichsanwalt) and by one or more national prosecuting attorneys;  
In the superior state court, the state courts, and the jury courts, by one or more state prosecuting attorneys;  
In the district courts and the lay justice courts, by one or more state prosecuting attorneys or district prosecuting attorneys.<sup>88</sup>

The local authority of the prosecuting attorneys to bring action is determined by the local jurisdiction of the courts for which they are appointed. In each district a member of the prosecuting attorney's office is appointed to handle emergency matters. If the prosecuting attorneys of different states cannot decide among themselves as to which of them has to undertake the prosecution, the decision is made by an officer commonly agreed upon by them; and in the lack of such an agreement, by the national Attorney General.<sup>89</sup>

The prosecuting attorneys may not undertake judicial business, nor may they be given any official supervision over the judges. They are officially independent of the courts and are not judicial officers, although they must be qualified for the judicial office. The national prosecuting attorneys are under the supervision and direction of the national Minister of Justice; the state prosecuting attorneys are under that of the state department of justice; the district prosecuting attorneys are supervised and directed by the highest officers of the attorney's office connected with the superior state courts and the state courts.<sup>90</sup>

The personnel of the police and safety services are assistant officers to the prosecuting attorney of their districts. The state law makes more detailed provisions in regard to the classes of officers to which this provision is applicable.<sup>91</sup>

**The Court Clerks.** Court clerks are established in every court. The sphere of activity of these clerks in the Reichsgericht is estab-

<sup>88</sup> GVG. Sections 141, 142.

<sup>89</sup> GVG. Section 143.

<sup>90</sup> GVG. Sections 147-51.

<sup>91</sup> GVG. Section 152.

lished by the national Minister of Justice, and in the state courts by the state department of justice.<sup>92</sup>

**The Summoning and Executory Officers.** The duties and functions of the officers entrusted with summonses, arrests, and executions are established in the Reichsgericht by the national Minister of Justice, and in the state courts by the state department of justice.<sup>93</sup>

**The Attorneys at Law.** The attorneys at law are the professional representatives and advocates of private persons before the courts. In civil processes before the state courts, the superior state courts, and the Reichsgericht, each party must be represented by a duly authorized attorney.<sup>94</sup>

Only those may be admitted as attorneys who have the qualifications for the judicial office, as described above. One who has been admitted to practice in a state of Germany, may become an attorney in any other state, although this is actually accomplished rather seldom. The state department of justice, rather than the national, gives permission to become a member of the bar.<sup>95</sup>

**The Staatsgerichtshof.**<sup>96</sup> Article 108 of the Constitution provides that a national statute shall establish for the Reich a Staatsgerichtshof, or High Court of State; and Article 172 provides for the temporary organization of such a court. The contemplated statute was passed on July 9, 1921.<sup>97</sup> It establishes the Staatsgerichtshof in connection with the Reichsgericht, for the trial of impeachment cases.<sup>98</sup>

<sup>92</sup> GVG. Section 153.

<sup>93</sup> GVG. Section 154.

<sup>94</sup> The legal relationships of the attorneys at law are regulated by the national law of July 1, 1878, RGBL. 177, as amended by an ordinance of June 1, 1920, RGBL. 1108; a law of July 1, 1922, RGBL. I, 573; a law of April 27, 1923, RGBL. 254; a law of July 9, 1923, RGBL. I, 647; Article III of a law of October 13, 1923, RGBL. I, 943; Article III of an ordinance of November 23, 1923, RGBL. 1117; and Article XII of an ordinance of February 6, 1924, RGBL. I, 44.

<sup>95</sup> See Rechtsanwaltsordnung, RGBL. 1878, p. 177, with amendments as cited above; also de Grais, p. 277 ff.; Lympius, p. 155 ff.

<sup>96</sup> See Chapters IV and VI.

<sup>97</sup> RGBL. 1921, p. 905. For discussion, see Wilke in D. Jur.-Zeitung, 1921, p. 587.

<sup>98</sup> When the National Administrative Court is established, a chamber or chambers of the Staatsgerichtshof will be connected with it to handle the cases of constitutional interpretation assigned to the Staatsgerichtshof. RGBL. 1921, p. 905, Sections 1, 16-23. In the meantime, all chambers of the Staatsgerichtshof are connected with the Reichsgericht.

Article 59 of the Constitution makes the following requirements in regard to impeachments: "The Reichstag shall have power to bring before the Staatsgerichtshof impeachment proceedings against the national President, the national Chancellor and the national Ministers, for wrongful violation of the Constitution or of a national law. The bill of impeachment must be signed by at least one hundred members of the Reichstag and requires the approval of the majority necessary for constitutional amendments."

The law on the Staatsgerichtshof provides that for such cases the court shall consist of the President of the Reichsgericht, as chairman; one member each, of the Superior Administrative Court of Prussia, the Bavarian Superior State Court, and the Hanseatic Superior State Court; a German attorney; and ten other members, one-half of whom are elected by the Reichstag and one-half by the Reichsrat.<sup>99</sup>

If the Reichstag has decided upon bringing in an impeachment, the president of this body sends to the chairman of the Staatsgerichtshof its written indictment, which opens the proceedings. The proceedings are governed by certain of the provisions governing criminal process in the criminal chambers.<sup>1</sup>

In its decision the Staatsgerichtshof states whether the person impeached has wrongfully violated a certain provision of the Constitution or of a national law, or whether he is absolved from the impeachment. It can declare that a guilty person has forfeited his office, if it finds him still in office.<sup>2</sup> When a person has been found guilty in impeachment proceedings, he can be pardoned only with the consent of the Reichstag.<sup>3</sup> The national Cabinet has to publish the decision.<sup>4</sup>

State laws may assign to the Staatsgerichtshof the competence to try and to decide impeachments brought by the representative body of the state against state presidents and parliamentarily responsible members of the cabinet,<sup>5</sup> under the same conditions and according to the same procedure as for national officers.

<sup>99</sup> Gesetz über den Staatsgerichtshof, Section 3.

<sup>1</sup> *Ibid.*, Sections 5 and 6.

<sup>2</sup> *Ibid.*, Section 12.

<sup>3</sup> *Ibid.*, Section 13.

<sup>4</sup> *Ibid.*, Section 14.

<sup>5</sup> *Ibid.*, Section 15. See Chapters IV and V.



In the decision of constitutional matters, the court is organized somewhat differently for two different groups of cases. The first group<sup>6</sup> involves entirely questions of law:

- Differences of opinion between the Reich and the states concerning the remedying of defects discovered in the execution of federal laws, according to Article 15, Paragraph 3, of the Constitution, are decided by the Staatsgerichtshof unless another tribunal is named by federal statute;
- Disputes as to proprietary rights which may arise between states in case of a union or separation under Article 18, Paragraph 7, of the Constitution; and
- Disputes on constitutional questions arising within a state in which no court exists for their decision, as well as disputes outside the domain of private law between different states or between the Reich and a state, where no other national court is competent, according to Article 19, Paragraph 1, of the Constitution.

In the above cases the court consists of the president of the Reichsgericht, three Reichsgericht councillors, and one councillor each from the Prussian Superior Administrative Court, the Bavarian Administrative Court of Judicature, and the Superior Administrative Court of Saxony.<sup>7</sup>

The second group of cases involves technical expert questions, as follows:

- Cases involving the right of expropriation and the sovereign rights of the states, in connection with the transfer of the railways to the nation;<sup>8</sup>
- Cases arising from the terms of transfer to the Reich of the post and telegraph systems of Bavaria and Württemberg, and the state railways, waterways, and maritime signals, under Articles 170 and 171 of the Constitution; and
- Differences of opinion, for the decision of which the Staatsgerichtshof is made competent in the state treaties concerning the taking over of these and other enterprises by the Reich, and the affairs connected therewith.<sup>9</sup>

<sup>6</sup> *Ibid.*, Section 16.

<sup>7</sup> *Ibid.*, Section 31. This is a temporary arrangement, until the National Administrative Court shall have been established. See Section 18. See Chapter II.

<sup>8</sup> Constitution, Article 90.

<sup>9</sup> Gesetz über den Staatsgerichtshof, Section 17. For the competence of the Staatsgerichtshof, see Hatschek, II, p. 600.

For this second class of cases the court consists of the president of the Reichsgericht, a councillor of the Reichsgericht, a councillor of the Prussian Superior Administrative Court, and four other members, one-half of whom are elected by the Reichstag and one-half by the Reichsrat.<sup>10</sup>

Procedure is ruled in part by the law establishing the Staatsgerichtshof, in part by the provisions of other laws which it makes applicable, and in part by a special order of business<sup>11</sup> provided for by the law.

**The Decision of Questions of Jurisdiction.** The courts decide for themselves questions as to their authority and jurisdiction. The state legislature, however, may submit to special tribunals controversies between the regular courts and the administrative authorities or administrative courts concerning questions of jurisdiction, subject to the following provisions:

The judges of such tribunals shall be appointed for life; or, in the event that they already occupy an office, for the term of such office. They may be removed from office only under the same conditions as members of the Reichsgericht.

At least one-half of the members must belong to the Reichsgericht or to the supreme court of a state. The number of members must be uneven, and at least five; and to arrive at a decision there must be such a number of votes cast as is specified by law;

The procedure of these tribunals is to be fixed by law. Their decisions are rendered in open session after summons of the parties; and

If a regular court assumed jurisdiction and rendered a final judgment before a motion was made to transfer the controversy as to jurisdiction to such a special tribunal, the decision of the regular court is final.<sup>12</sup>

### Judicial Examination into the Constitutionality of Laws.

Before the establishment of the present Constitution the courts of Germany did not exercise the right to pass upon the constitutionality of acts of the national legislature. Although the makers of the Weimar Constitution could not have failed to realize that the courts

<sup>10</sup> *Ibid.*, Section 31. This arrangement will be changed upon the establishment of the National Administrative Court. See *ibid.*, Section 18, No. 2.

<sup>11</sup> RGBl. 1921, p. 1535.

<sup>12</sup> GVG. Section 17.

would be called upon to assume this function, just as they were in the United States, yet the Constitution neither bestows nor withholds the right of reviewing the constitutionality of national laws. However, it carefully provides for review in respect to state laws and constitutional provisions, when the issue is raised by the competent state or national authorities.<sup>13</sup>

The Staatsgerichtshof is authorized to take jurisdiction in these cases. Though no provision is made in the Constitution or the executive laws for the settlement of the question of constitutionality as between the state and the Reich when the issue is raised by a private individual, the Reichsgericht has decided to take jurisdiction in such instances, and its language is so general as to imply that any judge of any German court may do the same.<sup>14</sup>

It was not until November, 1925, that the question of the right of the courts to pass on the constitutionality of national laws was decided. At this time the Reichsgericht held:<sup>15</sup>

The provisions of the national Constitution can be invalidated only through a constitutional amendment passed in the regular form. They remain binding upon the judge, therefore, despite conflicting provisions of a later national law which has been passed without observation of the requirements of Article 76 (governing constitutional amendments); and they make it necessary for him to set aside as invalid the conflicting provisions of the later law.

The situation is complicated by the fact that the competence of the Reichsgericht to review is not exclusive, since it is not the only supreme court of Germany. There are, in addition to the Reichsgericht, a group of other highest courts of the Reich, each of which is a final authority for its own class of cases. Among these are the Reichsfinanzhof for the decision of tax cases; the Bundesamt für das Heimatwesen, which decides controversies between localities in respect to the care of dependants; the Reichsversorgungsgericht, which finally settles claims to relief of those injured in the war; and the Staatsgerichtshof. Thus the fact that the Reichsgericht has

<sup>13</sup> Constitution, Articles 13 and 19. =

<sup>14</sup> Entscheidungen des Reichsgerichts, Strafsachen 56, p. 177 ff., especially p. 180. See Arndt's commentary on the Constitution, Article 19, note 1, for opposing view. See article by Marx (Dr. Fritz M.) on Article 13, paragraph 2, in Archiv des öff. Rechts, 1923-24, N. F. 6, p. 218 ff.

<sup>15</sup> Entscheidungen des Reichsgerichts, Zivilsachen, III, p. 320 ff.

assumed the responsibility of declaring acts of the national legislature invalid which are contrary to the Constitution, and has made the general and sweeping statement that it is the duty of the judge to do this and to refuse to enforce such laws, may lead to considerable confusion, since other courts of highest instance may make equally valid but wholly inconsistent findings in respect to laws governing cases over which they have jurisdiction. "It can now easily happen, and indeed has already happened, that one highest court declares a law or an ordinance unconstitutional, while another holds it as constitutional; yet there is no procedure provided for remedying the intolerable legal uncertainty thence arising."<sup>16</sup>

An attempt is being made to remedy the difficulties thus created by forbidding all courts to pass on the constitutionality of national laws, except the Staatsgerichtshof, which is to be declared exclusively competent for this function.<sup>17</sup>

The problems here presented are of extreme importance for administration as well as law, since the question of constitutionality applies not only to statutes, but to ordinances having the force of law, and will more or less directly involve other administrative measures.

It will be remembered also, that except for impeachment cases, the Staatsgerichtshof will be connected with the proposed national administrative court.<sup>18</sup>

**Court Procedure.** Procedure before the courts may be divided into three main classes: procedure in the civil courts, which is

<sup>16</sup> Quoted from a letter to the authors from Regierungsrat Prof. Dr. Friedrich Schiller.

<sup>17</sup> *Ibid.* For more extended discussions regarding the problem of judicial review in Germany, see Richard Grau, Zum Gesetzentwurf über die Prüfung der Verfassungsmässigkeit von Reichsgesetzen und Reichsverordnungen, Archiv des öffentlichen Rechts, neue Folge, Bd. II, p. 287 ff.; Poetzsch in Deutsche Juristen-Zeitung, 1926, p. 1265 ff.; Blachly and Oatman, "Judicial review of legislative acts in Germany," *Amer. Pol. Sci. Review*, February, 1927; Bühler in Deutsche Juristen-Zeitung, 1921, pp. 580 ff.; Jellinek, *ibid.*, p. 753; Theisen, Verfassung und Richter, in Archiv des öff. Rechts, 1925, N. F. 8, p. 257 ff.; Stier-Somlo, Reichs- und Landesstaatsrecht, I, p. 674 ff.

<sup>18</sup> RGBl. 1921, p. 905, Section 1; Friedrich, "The issue of judicial review in Germany," *Pol. Sci. Quar.*, June, 1928; Thoma in Archiv d. öff. Rechts, Bd. XLIII; Marx, Variationen über die richterliche Zuständigkeit zur Prüfung der Rechtmässigkeit der Gesetzes.

regulated by the national Code of Civil Procedure;<sup>19</sup> procedure in criminal affairs, which is regulated by the national Code of Criminal Procedure;<sup>20</sup> and procedure before the administrative courts, which varies to a considerable extent with the different administrative courts.

*Civil Process.* In civil affairs, judicial procedure involves procedure in the first instance, followed if necessary by what are termed legal remedies, which have as their object the review of a judicial decision by a higher court. Procedure in the first instance varies somewhat, according to the kind of court—state or district—before which the case is tried.

The opening move in procedure in the first instance is the entering of a complaint, which is accomplished by the presentation of a written plea signed by an attorney-at-law. In order to avoid overcrowding the calendar, each matter is handled at first before an individual judge, whose duty it is to bring about an amicable settlement if possible.<sup>21</sup> If an agreement is not reached, the individual judge has to develop the case through exhaustive discussion of its factual and controversial relationships, in such a way that it can be settled as easily as possible before the process court. For this purpose he has a limited right of independent decision and may also collect evidence. In case both parties are willing, the individual judge rather than the court, can decide the case when the point at issue is claims concerning property rights. When the matter is brought before the court for verbal hearing, the court decides, in view of all the statements made by the parties and the results of evidence received, according to its own free conviction. In the formal opinion the grounds of the decision are given.<sup>22</sup> If the parties are willing, the court may make a decision without a verbal hearing.<sup>23</sup> In case the receiving of evidence is ordered, it takes place either before the process court itself or before a judge entrusted with the duty.<sup>24</sup>

<sup>19</sup> Zivilprozessordnung, RGBI. 1877, p. 83 ff. See the excellent annotated edition by Sydow, Busch, and Krantz, published in Berlin in 1925. For interesting discussions, see Juristische Wochenschrift of January 29, 1927. This code will be cited as ZPO.

<sup>20</sup> New edition, RGBI. 1924, I, p. 322 ff.

<sup>21</sup> ZPO. Sections 348-50.

<sup>22</sup> ZPO. 286.

<sup>23</sup> RGBI. 1924, I, 552, Section 7.

<sup>24</sup> ZPO. Sections 283-85, 355 ff.

The result of the hearing is rendered in a formal opinion which is called, according to its significance, a judgment or a decision. The former may be either a final judgment, if it decides the entire process; a partial judgment, if it decides one of several claims or a portion of a claim, or in case a countercomplaint is raised, only the complaint or countercomplaint; or an intermediate judgment, if it decides an intermediate controversy.<sup>25</sup> The judgment must contain a presentation of the facts of the case and the grounds for the decision; it is announced by reading the formal opinion.<sup>26</sup>

The procedure before the district court, which is governed by Sections 495a to 510a of the Code of Civil Procedure, is similar to that before the state court; except that it is more narrowly restricted and an endeavor to adjust the matter amicably must regularly precede the entering of the complaint.<sup>27</sup>

*Legal Remedies.* The legal remedies which are available to those who feel themselves injured by the decision of the first instance are three in number; the petition, the review, and the appeal (Berufung; Revision; Beschwerde).

The petition may be entered against the final judgment issued in the first legal proceedings. In lawsuits concerning property claims it can only be entered when the claim is of a certain specified amount.<sup>28</sup> The case is handled by the court petitioned, *de novo* within the limits specified by the motions of the parties.<sup>29</sup>

The review is used against the final judgments issued on petitions by the supreme state courts; except those dealing with arrests and temporary orders. It may also be used when the point at issue is the non-permissibility of recourse to the law or of the petition; and when the case involves claims for which the state courts have exclusive competence. Under specified conditions the petition is not needed, and the review is used against final judgments issued by the state courts in the first instance.<sup>30</sup> The courts capable for review are the Reichsgericht<sup>31</sup> and the state supreme courts.<sup>32</sup> The review

<sup>25</sup> ZPO. Sections 300, 301, 303.

<sup>26</sup> ZPO. Section 313.

<sup>27</sup> Ordinance of February 13, 1924, RGBl. I, 135, No. 56 ff.

<sup>28</sup> ZPO. Section 511, 511a.

<sup>29</sup> ZPO. Section 525.

<sup>30</sup> ZPO. Sections 545-66a.

<sup>31</sup> GVG. Section 133.

<sup>32</sup> Section 8 of the Einführungsgesetz zum GVG., RGBl. 1877, p. 77.

can only be based upon the fact that the decision rests upon the breaking of a national law, or a law the validity of which applies beyond the district of the court which acted upon the petition.<sup>33</sup> The time for the review is one month.<sup>34</sup>

The appeal is used in cases where it is especially permitted by the Code of Civil Procedure, and against decisions which do not require a preliminary oral discussion, in which a question of procedure is referred back. In general an appeal is not permitted against the decisions of the supreme courts of the state, although an exception exists.<sup>35</sup> Decisions of the state courts in respect to the costs of process are not subject to further appeal.<sup>36</sup> The appeal is decided by the next highest court having jurisdiction. Against the decision of the appellate court, a further appeal is not permitted unless a new and independent ground for appeal is contained in it.<sup>37</sup>

The appeal is brought in the court, by which or by whose chairman the contested decision was issued; it can be brought in case of necessity also in the appellate court. It may be based upon new facts and evidence.<sup>37</sup>

*Retrial.* A retrial, in contrast to the legal remedies, is not a reference of the case decided in one instance, to a second instance, but a fresh trial of the case in the court of original jurisdiction. It is based upon a plea for the setting aside of the verdict or for restitution.<sup>38</sup> If the plea is granted, the new trial takes up all aspects of the case that are affected by the grounds of the plea.<sup>39</sup>

*Criminal Process.* The Code of Criminal Procedure<sup>40</sup> was promulgated in 1877; a 1924 revision of it is now in effect.

Procedure in the first instance is based upon action in the form of a complaint brought by the public prosecuting attorney; or for certain classes of cases, by private parties or by the administrative authorities.<sup>41</sup> It is the duty of the prosecuting attorney (except as

<sup>33</sup> ZPO. Section 549; GVG. Section 337.

<sup>34</sup> ZPO. Section 552.

<sup>35</sup> ZPO. Section 567.

<sup>36</sup> ZPO. Section 568.

<sup>37</sup> ZPO. Sections 569, 570. For further provisions, see Sections 571-77.

<sup>38</sup> ZPO. Section 578.

<sup>39</sup> ZPO. Section 590.

<sup>40</sup> Strafprozessordnung (hereafter cited as SPO.), RGBl. 1877, p. 253; RGBl. 1924, I, p. 299 (322). See also RGBl. 1925, I, p. 475. For discussion, see latest annotated edition by Dr. Edward Kohlrausch.

<sup>41</sup> SPO. Sections 151, 152, 374, 424.

the law may assign this function to another person) to proceed against all violations of the law when sufficient evidence exists to warrant him in so doing. Very slight infractions of the law without serious consequences need not be followed up, unless it is to the public interest that a court decision shall be rendered on such matters. Minor misdemeanors need not be prosecuted if the judge agrees with the prosecuting attorney to this effect. If action has already been instituted, the court with the consent of the prosecuting attorney, may decide to suspend proceedings. This decision cannot be contested.<sup>42</sup> A public complaint cannot be withdrawn after the opening of the investigation.<sup>43</sup>

The investigation and decision are limited to the facts specified and the persons accused in the complaint. Within these limitations the courts are authorized and obligated to act independently; they are not bound to apply the criminal law.<sup>44</sup>

A preliminary investigation is held in respect to criminal cases which should come before the Reichsgericht, the superior state courts, or the jury courts. In cases belonging to the competence of the district courts, a preliminary investigation is held only upon request of the prosecuting attorney, or of the accused (if there appear reasonable grounds for such a request).<sup>45</sup>

A record of every investigation must be kept, and signed by the investigating judge and the court clerk.<sup>46</sup> The preliminary investigation is carried only so far as is necessary in order to determine whether the formal trial should be opened or the charge dismissed.<sup>47</sup> This point is decided, upon a presentation of the necessary documents by the prosecuting attorney, by the Reichsgericht or the superior state courts for matters coming under their jurisdiction; otherwise by the state courts. The courts also have the option of ordering a temporary suspension of proceedings.<sup>48</sup>

After the usual formalities of charge, summons, and so on, the formal trial begins with the calling of witnesses and experts. The charge is read, the accused is examined, and witnesses are called.<sup>49</sup>

<sup>42</sup> SPO. Section 153; see also 154.

<sup>43</sup> SPO. Section 156.

<sup>44</sup> SPO. Section 155.

<sup>45</sup> SPO. Section 178.

<sup>46</sup> SPO. Section 188.

<sup>47</sup> SPO. Section 190.

<sup>48</sup> SPO. Section 198. See also the following sections.

<sup>49</sup> SPO. Sections 243, 248 ff.



Very careful specifications are made in the Code, as to the rules of testimony. After the hearing of every witness, expert, or co-defendant, as well as after the reading of every document, the defendant is asked whether he has anything to say.<sup>50</sup> After the conclusion of the testimony the prosecuting attorney and the defendant are allowed to speak; the former may reply; the defendant has the last word.<sup>51</sup>

The verdict can be only guilty or not guilty, except when the necessary formalities of prosecution have not been complied with properly, when the suit may be dismissed.<sup>52</sup> The verdict refers only to the facts mentioned in the charge; <sup>53</sup> it must state which of these are established as proved, and must designate the criminal law which has been broken. The decision must be read aloud; the grounds on which it is based must also be made public.<sup>54</sup> A record of the formal trial is kept, which must be signed by the presiding judge and the court clerk.<sup>55</sup> Special provisions are made for trial *in absentia*.<sup>56</sup>

*Legal Remedies.* Either the prosecuting attorney or the defendant who has been found guilty may employ the legal remedies provided by law, or the former may employ them in favor of the latter.<sup>57</sup> The first legal remedy provided by the code, and the one of most general application, is the *appeal*, which lies against "all decisions made by the courts in first instance or in petition instance, and against the orders of the presiding judge, the investigating judge, the district judge, and a judge especially entrusted or petitioned unless the law especially precludes a protest."<sup>58</sup> This does not include decisions and orders of the superior state courts and of the Reichsgericht, or certain other specified decisions.<sup>59</sup> The appeal

<sup>50</sup> SPO. Sections 249-57.

<sup>51</sup> SPO. Section 258.

<sup>52</sup> SPO. Section 260.

<sup>53</sup> SPO. Section 264. For alterations in the charge, see Sections 265, 266.

<sup>54</sup> SPO. Sections 267, 268. See also Section 275.

<sup>55</sup> SPO. Sections 271-74.

<sup>56</sup> SPO. Sections 276-95.

<sup>57</sup> SPO. Section 297. The legal representative of the defendant who has been found guilty, and in case said defendant is a married woman, her husband, may independently employ legal remedies. Section 298.

<sup>58</sup> SPO. Section 304.

<sup>59</sup> SPO.; also Section 305.

is entered in the court which made the contested decision ; if this court considers it well founded, it may redress the grievance ; otherwise the appeal is presented at once to the court which has jurisdiction over appeals from this instance.<sup>60</sup> The presentation of the appeal does not effect a stay of execution, but this may be ordered by the court or the judge whose decision is contested, or by the appeal court.<sup>61</sup> If the appeal is sustained, the court receiving it decides the case.<sup>62</sup> The appeal is decided without a verbal hearing, although the prosecuting attorney may be heard if this seems advisable. Decisions involving imprisonment which are made by the state courts as courts of appeals, may be contested by means of further appeals ; otherwise no further appeal is permitted.<sup>63</sup>

The *petition* is employed against the decisions of district courts and lay courts, with certain exceptions specified by law. It is presented in the court of first instance within one week after the judgment has been rendered ; and it acts to restrain the enforcement of the judgment on the contested points.<sup>64</sup> The petition and accompanying documents are sent by the court clerk to the prosecuting attorney, who sends them to the prosecuting attorney of the court petitioned. This court may dismiss the petition as unfounded ; or may admit it<sup>65</sup> and examine into the case in a hearing to which the original witnesses may be summoned and at which new evidence may be introduced. The judgment of the lower court is examined only as to the points contested. When the court which is acting upon the petition has rendered judgment, this may be contested by an appeal.<sup>66</sup> The judgment may not be more prejudicial to the petitioner than was that of the court of first instance.<sup>67</sup>

The *review* is permitted as a remedy against decisions of the state courts and the jury courts ; also against those decisions of the district courts to which the petition is not applicable.<sup>68</sup> A judgment

<sup>60</sup> SPO. Section 306.

<sup>61</sup> SPO. Section 307.

<sup>62</sup> SPO. Section 351.

<sup>63</sup> SPO. Section 310.

<sup>64</sup> SPO. Sections 312-16.

<sup>65</sup> SPO. Sections 320-22.

<sup>66</sup> SPO. Sections 320-27. The following sections give further details as to deciding petitions, remanding to the court of first instance, and other special points.

<sup>67</sup> SPO. Section 331.

<sup>68</sup> SPO. Sections 333, 334.

against which the petition might be used, may be contested by the review instead. The review must be based upon an infraction of law in connection with the judgment contested, such as the failure to apply a legal standard.<sup>69</sup> If the motion for review which is entered in the court that rendered the decision, is allowed, it restrains the effect of the judgment as regards the points contested.<sup>70</sup> The motion and accompanying documents are sent by the prosecuting attorney to the reviewing court, which may reject the motion as lacking foundation, or may accept it and examine into the case through records and a hearing. Such examination is limited to the matters specified in the motion. The original judgment is set aside insofar as the reviewing court sustains the motion for review.<sup>71</sup>

A *retrial* is granted when it can be shown that certain specified irregularities or infringements of the rights of the defendant have affected the decision.<sup>72</sup> The court which rendered the contested decision passes upon the motion for a retrial. If the motion is granted, the court appoints a judge to conduct the retrial. This may be held formally, or if the evidence seems to warrant it, the court (with the consent of the prosecuting attorney in public prosecutions) may acquit the defendant without a formal hearing. Decisions are subject to appeal.<sup>73</sup>

The remainder of the Criminal Process Code is devoted to procedure in private suits, special types of procedure for particular classes of suits, execution, pardons, and costs. The executory authority is the prosecuting attorney's office. Execution in certain kinds of cases may be turned over to the district judges by order of the state department of justice.<sup>74</sup> The laws provide that persons acquitted at a trial or a retrial may collect damages from the state under specified conditions.<sup>75</sup>

**Summary and Conclusions.** It is evident from the foregoing discussion that Germany has done much to unify her system of judicial

<sup>69</sup> SPO. Sections 335 ff. Section 338 lists a number of instances in which it is to be considered that an infraction of law has occurred.

<sup>70</sup> SPO. Sections 341-45.

<sup>71</sup> SPO. Sections 346-53.

<sup>72</sup> SPO. Sections 359-62.

<sup>73</sup> SPO. Sections 367-72.

<sup>74</sup> SPO. Section 451.

<sup>75</sup> Law of July 14, 1904 (RGBl. p. 321), revised as of August 17, 1920 (RGBl. p. 1579); law of May 20, 1898 (RGBl. p. 345).

administration, but has not attempted an absolute centralization. The unification of the system is shown particularly in the fact that she has established national, civil, criminal, and commercial codes and a national system of civil and criminal process, and has laid down by national law the general organization of the courts. On the other hand, the states determine upon judicial districts, choose the personnel of state and district courts, provide salaries, supervise the order of business, and exercise a certain supervision over the state courts. The lack of complete centralization is also shown in the fact that the administrative court systems of the states are entirely under state control.

Another impressive feature of the German system is the fact that many special courts are created for special functions. In addition to the regular administrative courts, which will be discussed later, numerous courts are established to handle special classes of cases involving administrative questions but also demanding expert knowledge. Thus to-day, taxation cases, a great number of economic cases, conflicts between poor law unions, suits over patents, labor cases, insurance cases, and claims resulting from war injuries are handled not by the ordinary courts, but by separate courts which are usually considered to be special administrative tribunals. Besides these, a number of courts have been established which perform special judicial functions not administrative in nature. This group includes such tribunals as the Mixed Courts of Arbitration and the extraordinary courts established under Article 48 of the Constitution. Moreover, it will be remembered that in the regular courts, civil and criminal cases are handled by separate chambers. In the district courts juvenile chambers are established, and in the state courts a chamber for commercial affairs may be established.

It is sometimes urged against this high degree of specialization, that the result is a confusion of jurisdictions, since many cases involve questions so complicated that frequently it is practically impossible to decide in which of several courts a complaint should be entered, and very difficult for the court itself to take or to refuse jurisdiction without doing an injustice to the petitioner or coming into conflict with some legal provision. Those who take this view also insist that the numerous special courts involve a bewildering multiplicity of processes. The sum total of all the objections ap-

pears to be the claim that the system is now so intricate as to be unwieldy. Against these arguments it is adduced that the uniform and careful training of all judges and lawyers in Germany, the legal provisions for the solving of conflicts of jurisdiction, and the fact that most processes are based on the civil process code with only a few easily mastered variations, make such results unlikely; while the positive benefit of having cases tried before judges who are skilled not merely in law, but in the particular technical problems which they must decide before the law can be equitably applied, is very great. There can be little doubt from the trend of current legislation, that the latter view prevails in Germany to-day, despite a strong counter-tendency which is observable in legal literature.

Since civil and criminal law, as well as the commercial code, are national affairs, it is highly fitting that a national court, the Reichsgericht, should be the final court of appeals from the ordinary courts. In this respect a vast difference exists between the United States and Germany, since in the United States both the civil and criminal codes are determined by each state; each state determines upon its own civil and criminal procedures; and only cases involving national legal or constitutional questions come up from the state courts to the Supreme Court of the United States. The contrast becomes more striking when it is realized that in Germany the law of contracts, property law, domestic relations, and inheritance, the laws of commerce and business, and the laws governing crimes and punishments are entirely controlled by the Reich. Thus, national law lays down the most fundamental rights, duties, obligations and relationships of individuals. The Reichsgericht acts as a force unifying the law and giving it an equal application. There can be little doubt from Germany's experience, that national civil and criminal codes, with corresponding national codes of civil and criminal procedure, and a supreme national court interpreting these codes, greatly simplify the legal system of a country and obviate many of the difficulties which exist in the United States.

Despite the considerable degree of uniformity brought about by national legislation, the relationship between the Reich and the states in the administration of justice is far from being one of complete control on the part of the former and obedience on the part of the latter. Although the Reich has laid down fundamental

principles for the administration of justice, thus greatly limiting the sovereignty of the states, nevertheless, the states retain a considerable control over their courts.<sup>76</sup>

It must be emphasized that the national administration of justice stands in certain respects beside the state administration of justice and not above it. The national laws and the national administration of justice place limitations upon the sovereignty of the states in this matter,<sup>77</sup> but the Reichsgericht does not have any competence to interfere in the way of service supervision, censure, or the discipline of officers in charge of the administration of justice in the individual states. Nor does it have any competence for superior supervision and discipline in respect to the state courts.<sup>78</sup>

It should be noted that the state and national departments of justice exercise numerous functions in connection with judicial administration, while in no way interfering with the independence of the judges. Thus, the state administration of justice may assign the trial of criminal cases for the districts of several district courts, to one of these; and may make many other administrative arrangements, and appointments.<sup>79</sup> The national Minister of Justice decides upon the number of civil and criminal senates into which the Reichsgericht is divided, organizes the business office of the Reichsgericht, and so on.<sup>80</sup> Thus, the organization and business of the courts are linked up with the governmental departments, although the actual administration of justice is controlled only by the law.

One of the strongest features of the German judicial system is the high standard of education and training required of all members of the bench and the bar. The thorough practical as well as theoretical foundation which members of the legal profession must possess, is a factor of prime importance in developing and upholding the enviable reputation so justly possessed by German jurisprudence and German jurists.

<sup>76</sup> Hatschek, II, p. 572.

<sup>77</sup> See Constitution, Article 15, in respect to supervision of matters in which the Reich has a right to legislate; and Article 19 in respect to constitutional controversies within a state, or controversies of a public nature between different states or between the Reich and a single state.

<sup>78</sup> Entscheidungen des Reichsgerichts, Zivilsachen, Vol. 55, p. 138; Hatschek, II, p. 573.

<sup>79</sup> GVG. Section 58; see also Sections 36, 61, 77, 92, *et passim*.

<sup>80</sup> GVG. Sections 130, 153.

Several differences from the American system of procedure are to be noted in the German system. In both civil and criminal process, the court usually consists of several judges. Much of the preliminary work, however, is handled by a single judge. In civil cases it is the function of this judge to bring about an amicable settlement if possible. If not, he develops the case in such a way that it may be settled as expeditiously as possible before the court. The work of the investigating judge thus saves the time of the court, and may even make it unnecessary for the case to come to trial at all.

Although the theory of the trial of criminal cases is similar to that held in the United States, in that the trial must be public, an oral hearing must be had, the prisoner must have an opportunity to see and hear all witnesses, and lay elements shall participate in the decision as to guilt, yet in practice certain differences appear. The first noticeable difference is found in the fact that a judicial investigation may precede the actual trial of the case. Although this corresponds in a general way to the grand jury investigation, it is much more scientific, because conducted by an experienced person. The investigating judge has rather wide powers, but cannot go further than the complaint demands. He is primarily an investigator and fact gatherer for the court; but he does not, like the grand jury in the United States, decide whether further action should be taken or the case should be dismissed. This is a function of the court. The investigation, while not in any sense an inquisition, such as takes place in France, is a rather detailed expert inquiry by one with sufficient authority to secure facts and sufficient training to know what facts are significant. From the standpoint of efficiency, there is much to be said for investigation by a trained professional judge rather than a lay body, and for decision by the court as to the need of further procedure; but it may be urged against this method and in favor of the grand jury, that the presumption of guilt in the former instance is so much greater than in the latter—since the court will naturally trust its own judgment and that of an experienced investigating judge, far more than it will be inclined to trust the judgment of any body of laymen—as to constitute a possible disadvantage to the defendant.

In the United States, the lay element in criminal cases is a body apart from the court, making its decision as to guilt or innocence

almost independently; but in Germany the lay element forms a part of the court itself. In both the lay courts and the jury courts, laymen constitute two-thirds of the court and have equal voice. Since decisions are ordinarily made by a simple majority vote, in special cases (including a verdict of guilty) by a two-thirds vote,<sup>81</sup> the lay element has a preponderant voice in the decision, preserving the most essential characteristic of the jury system, a trial before peers who are not a part of the governmental or the judicial machine. Yet the experience, legal knowledge, and expert opinion of the judges is at the service of the laymen, and this not merely in a carefully guarded formal charge, but also in free and full discussion. It may be assumed that the effect of this arrangement is to prevent or at least to mitigate the sway of ignorance, passion, and prejudice, which opposing attorneys too often seek to establish over the minds of jurors, and to give reason and justice an opportunity to influence the decision. At the same time the balance of power lies with the lay justices or with the jury.

Finally, it should be remarked that the legal remedies against court decisions in both civil and criminal affairs appear to be adequate and easily available.

The high standards of judicial administration in Germany evidently depend in part upon the careful and scientific organization of both adjective and substantive law, in part upon the remarkably thorough training of judges and lawyers, and in part upon that less tangible but very real factor, the tradition of law enforcement. The chief weaknesses of the system at the present day are probably the tendency to over specialization and hence to unnecessary multiplication of courts, and the fact that no one court has final and supreme general jurisdiction in either the interpretation of law or the passing upon questions of constitutionality.

<sup>81</sup> GVG. Section 196; SPO. Section 263, paragraph 1.



## CHAPTER XIV

### ADMINISTRATIVE COURTS

Article 107 of the national Constitution of Germany provides that there shall be administrative courts in the Reich and in the states for the protection of individuals against orders and decrees of the administrative authorities. Many such courts were already in existence at the time when the Constitution was adopted, and others have been established since. Some of these courts, as will appear later, fulfil other functions in addition to that of protecting the individual. Their primary function, however, is to prevent abuses or misuses of power on the part of the administration, so that all of its acts are in fulfilment of law, and so that every act or omission required of the individual is within the boundaries of law and a necessary factor in its execution.

A definition of administrative courts, which is generally but not universally true throughout Germany, is given by Anschütz, as follows:

Administrative courts are administrative authorities which—in view of their special purpose, the exercise of a legal, independent and non-partisan administration of justice in administrative matters—are organized like courts and must observe a process modeled upon the procedure of the ordinary courts. The essence of administrative adjudication rests in the fact that the administrative activity, insofar as its function is the deciding of controversies, and is thus really adjudication, is exercised not by the customary ordinary administrative organs, but by special ones established purposely for deciding controversies; therefore in the separation of the controversy-deciding, from the remaining (pure, active) administration.<sup>1</sup>

In practice, the lower administrative courts are usually identical with the administrative authorities, but the upper ones contain judicial members. The proper relationship of these courts to the administration is a question much discussed at the present time.

<sup>1</sup> Anschütz, *Die Verfassung des Deutschen Reichs*, Note 1 to Article 107.

There is no unified administrative court system in Germany comparable to the ordinary court system, which, as the preceding chapter has shown, is articulated into a single grand structure, governed by codes established by the Reich. On the contrary, the various administrative courts in the Reich and in the states are established independently, and differ greatly in respect to organization, jurisdiction, and other important points. These vast differences are explainable largely on historical grounds, into which the limitations of space do not permit us to enter.

The national administrative court contemplated by the Constitution has not yet been established, although much attention has been given to the subject by jurists and legislators. There is little doubt that a bill will soon be passed establishing this court. All indications are that this court will be made the pinnacle of an administrative court system which will include in its organization all administrative courts of the nation and the states; and that a national administrative judicial code of procedure will be established. At present, however, these things are in the stage of discussion.<sup>2</sup>

**State Administrative Court Systems.** There are a considerable number of national administrative courts for special purposes, most of which have been discussed elsewhere in this book, so that it is unnecessary in the present chapter to devote further attention to them. We shall therefore proceed to examine the administrative court systems of the states.

As a general rule, in the larger states the administrative courts are organized in two or three instances, while in the smaller states there is but one instance. This rule, however, is subject to several exceptions.<sup>3</sup> Another general but not universal rule is that the districts of the administrative courts correspond to a certain extent with the administrative subdivisions of the state.<sup>4</sup>

There is considerable disparity of nomenclature among the administrative courts of the different states. In Prussia, for example,

<sup>2</sup> See Poetzsch, *Handausgabe der Reichsverfassung*, Note 1 to Article 107.

<sup>3</sup> Anhalt has three instances, Lippe and Mecklenburg-Strelitz have two each; Württemberg has only one.

<sup>4</sup> Thus in Prussia, which is organized into provinces, administrative districts, and counties, there are county, district, and state administrative courts; in Baden and Thuringia the district administrative court corresponds with the administrative district; in Bavaria there are county and district administrative courts, etc.

the lowest instance is called the county committee; in Bavaria, the county administration; in Saxony, the county directorate (Krieshauptmannschaften); in Thuringia, the county administrative court. The higher instance is usually called the superior administrative court or the administrative court of justice.

*Organization of the Lower Administrative Courts.* In the majority of the eleven states which have two or more instances, the first or the first and second instances are not separate and distinct courts, independent from the administration, but are themselves administrative authorities. This is true in seven of the largest states, while in four of the smaller ones the lower instance is separated from the administration. It is interesting to note that three of the latter, namely, Mecklenburg-Strelitz, Mecklenburg-Schwerin, and Thuringia, have established their administrative court systems since the new national Constitution was adopted.

The organization of the lower administrative instances varies to a great extent in the different states, but in most cases it is a committee or a board, a so-called collegial authority, which acts both as an agency of local self-administration, and as an administrative court. It is impossible within the compass of this work to describe in detail the organization of all these authorities, but a few examples may show in general how the lower instances are organized.<sup>5</sup> In Prussia the county committee (the lowest rural administrative court) consists of the county director as the chairman, and six members chosen by the county assembly.<sup>6</sup> The city committee (the lowest urban administrative court) consists of the mayor or his representative as chairman, and of four other persons elected by the magistracy from among its own members.<sup>7</sup> The chairman or a member of the city committee must have the qualifications for judicial office or for the higher administrative service, thus insuring a certain degree of expertness to the work of the committee.<sup>7</sup> The district committee (the second instance) consists of the administrative president<sup>8</sup> as chairman, and six other members. Two

<sup>5</sup> See Chapters IX and X for the organization of these bodies.

<sup>6</sup> LVG. Section 36. The county director (Landrat) is the head of local administration in the county, and also an agent of the state government. See Chapter X.

<sup>7</sup> LVG. Section 37.

<sup>8</sup> Head officer of the administrative district.

of these members, one of whom must have the qualifications for the judicial office and the other for the higher administrative service, are appointed for life by the state ministry. The other four members are selected by the provincial committee.<sup>9</sup>

In Anhalt the lowest and the intermediate instances are called respectively, the county administrative court and the state administrative court. The county administrative court is the county committee, except in four cities, with the status of independent counties, where it is the city committee.<sup>10</sup> The state administrative court consists of the administrative president or his representative as chairman, and four members, who include a higher administrative officer, a member of the Anhalt court, and two members chosen by the Landtag.<sup>11</sup>

In Hesse the lowest administrative court is the county committee, which consists of the county director and six members elected by the county assembly, at least half of them from among its own members.<sup>12</sup> The second instance, the provincial committee, consists of the provincial director and eight members similarly elected by the provincial assembly.<sup>13</sup>

All these cases illustrate the unification of the lower administrative courts with the ordinary organs of administration. This arrangement prevails over most of Germany, geographically speaking, and applies to the vast majority of its population. The laws of 1922 and 1923 which established administrative courts in Mecklenburg-Strelitz, Mecklenburg-Schwerin, and Thuringia, however, provide the opposite arrangement, a separate administrative court. It is difficult to decide whether these cases demonstrate a present-day tendency in the direction of organizing administrative courts separately from the regular administrative organs, which is advocated by many able jurists as an expression of the proper and necessary independence of the courts.<sup>14</sup>

<sup>9</sup> LVG. Section 28.

<sup>10</sup> Gesetz die Verwaltungsgerichte und das Verwaltungsstreitverfahren betreffend, GS. 1888, p. 41.

<sup>11</sup> *Ibid.*, Section 10.

<sup>12</sup> Gesetz, die Verwaltungsrechtspflege betreffend, Regierungsblatt, 1911 (p. 265 ff.), Article 2.

<sup>13</sup> Gesetz betreffend die innere Verwaltung u. s. w., Regierungsblatt, 1911 (p. 324 ff.), Sections 45, 81.

<sup>14</sup> See Drews, Dr. Bill, Grundzüge einer Verwaltungsreform, Amt. Ausgabe, 1919.

The lower instances usually hear formal suits in first instance; and informal complaints against certain acts of the administrative authorities, in first and second instance. This informal procedure, which means in substance that a higher administrative authority passes upon the conduct of a lower one, is generally considered very satisfactory in respect to minor matters, although the criticism is occasionally made that the citizen's point of view cannot be considered or his rights be protected so efficiently by this method as if he could come before a strictly judicial tribunal. However, the long experience of German administrators in such matters, the relationships between the administrative authorities (which are sufficiently distant to make impartiality possible), and the fact that for most controversies the road to the higher administrative court lies open, since informal procedure is optional rather than mandatory, are usually considered sufficient protection. Most of the demands for the reform of the administrative court systems refer chiefly to the higher instances.

**Organization of the Superior Administrative Courts and Their Relationship to the Administration.** The organization of the superior administrative courts of the various states of Germany does not conform to any general theory. These courts differ in respect to their titles, number of judges, qualifications for the office of judge, tenure of office, and relationship to the administration. A loose classification may perhaps be made, as follows:

(1) Superior administrative courts which are independent judicial authorities; (2) separately organized superior administrative courts which are partly composed of members of the legislature or the state ministry, or members elected by the legislature or the ministry; (3) superior administrative courts which are organized as collegial bureaus of the state ministry; and (4) superior administrative courts standing in organic relationship with civil justice by virtue of a close personal union between them and the ordinary courts.

*Independent Superior Administrative Courts.* Prussia, Bavaria, Hesse, Baden, Württemberg, Saxony, Brunswick, Mecklenburg-Schwerin, Thuringia, and Bremen, despite the striking differences in their administrative courts, may be said to fall under the first class.

The Prussian superior administrative court is organized as an independent judicial authority. Its members, called the president, senate presidents, and councillors, are appointed for life, and can only be removed from office by a decision of the entire court. One-half of them must have the qualifications for the judicial office and one-half for the higher administrative service.<sup>15</sup> This court consists at present of seven senates, one of which is called the "water economics" senate.<sup>16</sup>

The Bavarian administrative court of justice (Verwaltungsgerichtshof) consists of a president, a director, and the necessary number of councillors.<sup>17</sup> The members enjoy the rights belonging to judges and have the same rank and salary as members of the highest state court. During the continuance of their office they cannot be employed in administrative services. They must have the qualification for the judicial office.<sup>18</sup>

The administrative court of justice in Hesse is organized as an independent authority and consists exclusively of professional officers who enjoy the guarantees of judicial independence and can only be retired under the same conditions as members of the Reichsgericht. It consists of a president and the necessary number of members. The president and the members in the chief office are appointed for life.<sup>19</sup>

The administrative judicial court of Baden consists of five members qualified for the judicial office, who enjoy the guarantees of judicial independence. The necessary number of substitute judges are recruited from the members of the superior state court. The president and the members of the administrative court may not be employed in the administrative services during the continuance of their judicial office.<sup>20</sup>

<sup>15</sup> Ges. July 3, 1875, August 2, 1880 (Ges. Sam., p. 328), Sections 17-30a and Section 88: Ges. Sam., 1888, 226: Ministerialblatt für die Preussische innere Verwaltung, February 22, 1892, p. 133; May 15, 1893, p. 123; September 3, 1920, p. 312; June 13, 1925, p. 1259.

<sup>16</sup> VO. of March 12, 1924, GS. 130.

<sup>17</sup> Gesetz über die Errichtung eines Verwaltungsgerichtshofes und das Verfahren in Verwaltungsrechtssachen, August 8, 1878 (Gesetz und Verordnungs-Blatt), Sections 1, 2, 3.

<sup>18</sup> *Ibid.*, Sections 2 and 3.

<sup>19</sup> Gesetz, die Verwaltungsrechtspflege betreffend, of July 8, 1911 (Gesetz-Sammlung, p. 84), Articles 4-7.

<sup>20</sup> Gesetz den Verwaltungsgerichtshof und das verwaltungsgerichtliche Verfahren betreffend (Gesetz- und Verordnungs-Blatt, 1880, p. 29), Sections 1, 2, 4.

The Württemberg administrative court of justice consists of a director and the necessary number of appointed members. The director and one-half of the other members must have the qualifications for the judicial office. Since the abolition in 1924 of the county governments, which formerly acted as administrative courts of first instance, the administrative court of justice is the only administrative court in Württemberg.<sup>21</sup> It is organized as an independent tribunal, distinct from the active administration.<sup>22</sup>

The first and last instance in administrative legal affairs in Saxony is the superior administrative court, constituted after the manner of a court of justice, and composed of a president and the necessary number of senate presidents appointed for life, who must have the qualifications for the judicial office or the higher administrative services. The court is divided into senates, whose number is determined by the state ministry.<sup>23</sup>

The administrative court of justice in Brunswick consists of five members; a chairman, two members who have the qualifications for the judicial office, and two members from the higher administrative services. The judicial members are appointed from among the superior state court councillors. The chairman has the rights belonging to a judge.<sup>24</sup>

The state administrative court of Mecklenburg-Schwerin is one of the most recently established state administrative courts (March 3, 1922). It decides in sittings of a president and two chief councillors, who must have the qualifications for the judicial office and who are appointed by the state ministry, and two members elected by the state administrative council for a period of three years according to the principle of proportional representation. The president and the chief councillors have in general the rights and duties of judges.<sup>25</sup> Although this court does not quite correspond to the pure form of an administrative court entirely separated from the administration, it probably should be classified as such.

<sup>21</sup> *Regierungsblatt*, 1924, p. 173 ff., Section 13.

<sup>22</sup> *Gesetz über die Verwaltungsrechtspflege* of December 16, 1876 (*Regierungsblatt*, p. 485, Articles 3, 4).

<sup>23</sup> *Gesetz über die Verwaltungsrechtspflege* of July 19, 1900 (*Gesetz-Sammlung*, p. 486 ff.), Sections 1, 2, 3, 4, 10.

<sup>24</sup> *Gesetz, betreffend die Verwaltungsrechtspflege*, of March 5, 1895 (*Gesetz- und Verordnungs-Sammlung*, p. 79 ff.), Sections 1, 2.

<sup>25</sup> *Gesetz über die Verwaltungsgerichtsbarkeit* of March 3, 1922 (*Regierungs-Blatt*, p. 211 ff.), Sections 7, 8, 9, 10.

The superior administrative court of Thüringia is composed of a president and the necessary number of senate presidents and councillors. The court is an independent authority, subject only to the law, and separated from active administration.<sup>26</sup>

The administrative jurisdiction in Bremen<sup>27</sup> is exercised by an independent administrative court, subject only to the law. This court consists of both professional and lay members. The members with the status of public officers are selected by a committee composed of representatives of the senate, the legislature, and the judicial members of the administrative court itself, and are formally appointed by the senate. The other associates are elected on the principle of proportional representation, by a committee of citizens who have themselves been chosen on the same principle.

*Where the Administrative Court is Organized as a Court but is More or Less Under the Control of the Legislature or the Ministry.* There are only three examples of this type of organization, namely: Lippe, Lübeck, and Mecklenburg-Strelitz.

The superior administrative court in Lippe consists of a chairman and two associate judges appointed by the ministry, and two lay members. Of those appointed, at least one must belong to the Lippe bench and another must have belonged to it. The lay members are elected by the state legislature for a term of six years.<sup>28</sup>

The administrative court in Lübeck consists of a legally expert member of the senate as chairman, a judge and another expert member, and two lay members, all appointed by the senate.<sup>29</sup> Although the court is thus organized to a certain extent by and from the senate, it is not considered as a special branch of administration, "but as a parallel part of the ordinary jurisprudence."<sup>30</sup>

In the state administrative court of Mecklenburg-Strelitz, three members are appointed by the state ministry and three are elected by the legislative authority. The court is organically separated from

<sup>26</sup> Laws of March 27, 1924, and May 30, 1923.

<sup>27</sup> Gesetzblatt der freien Hansestadt Bremen, 1924, p. 23 ff.

<sup>28</sup> Gesetz, die Verwaltungsgericht und das Verwaltungsstreitverfahren betreffend, February 9, 1898 (Gesetz-Sammlung, p. 281 ff.), Section 11.

<sup>29</sup> Gesetz über die Verwaltungsgerichtsbarkeit, December 12, 1916; Lübeckische Gesetze und Verordnungen, 1916, Heft IV, p. 137 ff.

<sup>30</sup> Elbe, Die Verwaltungsgerichtsbarkeit nach den Gesetzen der Deutschen Länder, p. 58.



the administration, and its members are independent and subordinate only to the law.<sup>31</sup>

In Lippe, Lübeck, and Mecklenburg-Strelitz, the participation of the legislative authorities or the ministry in the selection of members of the court can hardly fail to affect it politically in some degree, and to make it more or less a controlling instance for the legislative authority rather than a pure administrative court. In no one of these states, however, is the superior administrative court directly connected with the administration.

*Where the Administrative Court is Organized as a Collegial Division of the State Ministry.* In Anhalt, the superior administrative court consists of a state minister as chairman, and six members, namely: the president of the state court, the director of the state court, two higher administrative officers, and two members elected by the Landtag. The two administrative officers are appointed for the terms of their regular office. The members elected by the Landtag must be persons eligible for election to that body, and their period of service is coterminous with that of the Landtag which chooses them.<sup>32</sup>

This court, then, is closely tied in with the actual administration and "has the quality of a collegial division of the state ministry."<sup>33</sup>

*Where the Superior Administrative Court, Because of the Personal Union of its Members With the Civil Courts, Stands in Organic Relationship to Them.* The superior administrative court in Hamburg consists of a chairman, legally trained members, and citizen members. The chairman and the legally trained members are appointed by the senate from the membership of the Hanseatic superior state court, for a term of three years. The other members, upon the nomination of the full assembly of the administrative court, are elected by the citizens for a similar term.<sup>34</sup> Except for the citizen members, then, this court is really only a senate of the Hanseatic superior state court.

From this brief examination of the organization of the superior administrative courts in the various German states, the following

<sup>31</sup> Gesetz über das Verwaltungsstreitverfahren, of August 17, 1922.

<sup>32</sup> Gesetz, die Verwaltungsgerichte und das Verwaltungsstreitverfahren betreffend, May 7, 1888 (Gesetz-Sammlung, p. 41 ff.), Sections 12, 17.

<sup>33</sup> Elbe, pp. 36-37.

<sup>34</sup> Gesetz über die Verwaltungsgerichtsbarkeit, 1921, Section 5 (Law found in Hamburgische Verhandlungen zwischen Senat und Bürgerschaft, 1920, p. 1140).

facts have been established: (1) The highest administrative courts of the German states have several different names, such as superior administrative courts, administrative courts of justice, state administrative courts, or (as in Bremen) the administrative court. (2) In no case are the members of these courts elected by the people. The general rule is appointment by the ministry, but exceptions exist in a few cases where certain members of these courts, particularly lay members, are selected by another authority, frequently the legislature. Bremen has an unusual method, explainable on historical grounds, of selecting judicially trained members by a committee of the citizens, senate, and courts, preliminary to their formal appointment by the senate. (3) Despite several important exceptions, the members of the highest administrative courts are, by and large, either persons with the qualifications of judges or persons serving in the higher administrative services. This is particularly true of the larger states and those whose court systems have been established for some little time. (4) In the majority of instances, the appointment is for life, and at least the judicial members of the court have the same rights and positions as judges of the ordinary courts. (5) In an overwhelming majority of cases, the superior administrative court is absolutely independent from the legislature. In Lippe, Lübeck, and Mecklenburg-Strelitz, however, there is not complete independence, due to the control exercised by the legislature in the way of appointment. (6) Except in Anhalt, the superior administrative courts are separated from the active administration both organically and functionally. This is so even in states like Prussia, where the lower administrative instances are closely identified with the active administration. (7) In all the states, except Hamburg, the administrative courts are neither organically nor functionally a part of the ordinary court system, but are entirely separated from it. Allowing for a few exceptions, therefore, the general statement may be made that the highest superior administrative courts of the states in Germany are composed largely of professional members, who have the qualifications for the judicial office or the higher administrative service; that these members enjoy life tenure and the general position of judges; that they are separated both organically and functionally from both the legislature and the active administration, and also from the ordinary civil and criminal courts.

**Jurisdiction.** The most important questions concerning the jurisdiction of the administrative courts are: The method of granting jurisdiction, the general nature and extent of administrative jurisdiction, and the particular fields which it includes. In these matters, as in the question of organization, no all-inclusive answer can be given. It is even doubtful whether any two states agree in all particulars.

Administrative jurisdiction in the German states is granted by two main methods. The first is the principle of enumeration; the second is that of a general grant of jurisdiction. In many instances some combination of the two is employed, as a general grant with enumeration of the most important fields of jurisdiction by way of example.

The method of enumerating the subjects over which the administrative courts are to have jurisdiction is by far the most common in Germany to-day.<sup>25</sup> According to this method, suits may be brought before the administrative courts only in respect to matters covered by an express grant. The jurisdiction of the administrative courts is derived either from very detailed grants in the laws establishing the courts or governing their competence, or from numerous laws issued at various times and under various circumstances. In the latter case, the jurisdiction can only be known through searching the laws. The almost inevitable result of this latter method of making the grant is, that there is no internal unity in respect to the affairs over which the administrative courts decide. Mere temporary expediency, rather than any general theory of what should be the functions of these courts, forms the basis of the grants made from time to time.<sup>26</sup>

In Prussia the grant of jurisdiction was made in a law establishing the competence of the administrative courts, of August 1, 1883, but other laws have made additional grants from time to time. In Bavaria it was made by a very extensive and detailed enumeration in the law establishing the administrative courts, to which relatively

<sup>25</sup> Dr. Bill Drews, DJZ. 1921, p. 88. On the matter of grants of jurisdiction, see Fleiner, *Institutionen des Deutschen Verwaltungsrechts*, p. 241 ff.; also Bühler, *Archiv d. öff. Rechts*, Bd. 43, p. 163.

<sup>26</sup> See Drews, *Verwaltungsreform*, p. 21; Friedrichs, *Verwaltungsrechtspflege*; Stier-Somolo, *Zur Reform der preuss. Staatsverwaltung*, Berlin, 1906, p. 63; Elbe, p. 30.

little has been added since.<sup>37</sup> The Anhalt law organizing the administrative courts gives a partial jurisdiction to them,<sup>38</sup> but also provides that the jurisdiction is to be regulated through a special law.<sup>39</sup> This does not seem to have been passed, but the jurisdiction is enlarged by numerous laws. There is no general formula in Hesse for the grant of administrative jurisdiction, but it has resulted from numerous laws especially assigning such jurisdiction to the administrative courts.<sup>40</sup> The administrative courts of Baden enjoy a jurisdiction that was derived partly from the law on Organization of the Inner Administration of 1863<sup>41</sup> and partly from the law regarding administrative jurisdiction of 1884.<sup>42</sup>

In Mecklenburg-Strelitz the administrative courts decide cases especially assigned to them by law, "without consideration as to whether it concerns a contentious affair or the undertaking of an administrative act, a subjective right or the safeguarding of the objective legal order."<sup>43</sup> The law of April 3, 1922, of Mecklenburg-Schwerin concerning administrative jurisdiction, divides the competence of the administrative courts into local competence and material competence, and says regarding the latter: "Before the administrative courts belong all contentions in administrative conflict procedure, which are given to them by the provisions of this law or any other law," and then gives an extended list of affairs which "especially are to be heard before the administrative courts."<sup>44</sup>

In Brunswick a complaint can only be brought before an administrative court when an administrative authority has examined the measure contested from the standpoint of administrative necessity and expediency, considered it finally and made its decision; when the complainant claims that he is injured in a subjective or personal right; when the decision rests upon the non-application or improper

<sup>37</sup> Elbe, p. 34. See Bavarian Gesetz, betreffend die Errichtung eines Verwaltungsgerichtshofes und das Verfahren in Verwaltungsrechtssachen, (Gesetz- und Verordnungs-Blatt, 1878, p. 369 ff.), Sections 8, 9, 10.

<sup>38</sup> *Lex. cit.*, Anhalt GS. 1888, p. 41, Sections 3, 4, 5.

<sup>39</sup> *Ibid.*, Section 2.

<sup>40</sup> For example, see Regierungsblatt, 1920, Gesetz die Gemeindeumlagen betreffend, p. 245 ff., Article 46.

<sup>41</sup> Sections 5, 6, 15.

<sup>42</sup> Gesetz und Verordnungsblatt 1884, p. 197 ff.

<sup>43</sup> Elbe, p. 50; Law of August 17, 1922, Amtl. Anzeiger, p. 473.

<sup>44</sup> Regierungs-Blatt, 1922, p. 211 ff.

application of an existing law; or when the facts did not justify the decision. Finally, the complaint must involve a specific affair given over to the administrative courts in the rather long and detailed enumeration of affairs of administrative contentious jurisdiction.<sup>45</sup>

The administrative courts of Lippe have the right to decide "conflicts upon the territory of administration concerning claims or contracts of a public legal nature . . ." when they concern a number of affairs enumerated in the law.<sup>46</sup>

In Thuringia the actual competence of the administrative courts is "determined by the laws." "

In a law of Württemberg of December 16, 1876,<sup>48</sup> the competence of the administrative court of justice is established by a clause which provides: "The administrative legal procedure is employed for conflicts and formal complaints in respect to claims and contracts arising out of public law, in the cases designated in the present law." The law proceeds to enumerate many cases in which the various administrative courts have jurisdiction.<sup>49</sup>

The law of Saxony, of July 19, 1900,<sup>50</sup> displays many resemblances to the Württemberg law.<sup>51</sup> The general formula for the exercise of administrative jurisdiction is found in the first section of the law, which provides that the administrative courts shall hear "the administrative matters assigned to them by law."

In the laws of Hamburg we see the jurisdiction given to the administrative courts in a general way, with the most important subjects enumerated by way of example.<sup>52</sup> The same is true for Lübeck and Bremen, where the jurisdiction of the administrative

<sup>45</sup> Sections 45-70 of law of 1895 cited above.

<sup>46</sup> Gesetz betreffend die sachliche Zuständigkeit der Verwaltungsgerichte, of February 9, 1898, Sections 1, 2.

<sup>47</sup> Law of May 30, 1923, Section 27.

<sup>48</sup> Regierungsblatt, 1876, p. 485 ff., Article 1.

<sup>49</sup> *Ibid.*, Articles 10-16. These articles list both subjects of jurisdiction and legal remedies. The provisions as to county administrative courts are no longer applicable, since, as is explained elsewhere in this chapter, the county has recently been done away with.

<sup>50</sup> Gesetz-Sammlung, 1900, p. 486 ff.

<sup>51</sup> Bühler, Die subjektiven öffentlichen Rechte und ihr Schutz in der deutschen Verwaltungsgerichtsbarkeit (Berlin, 1914), p. 489; Elbe, p. 46.

<sup>52</sup> Gesetz über die Verwaltungsgerichtsbarkeit of November 2, 1921 (GVBl. p. 595).

court of justice is given through a general clause, and through enumeration of some of the principal fields by way of example.<sup>52</sup> In the five states of Württemberg, Saxony, Hamburg, Lübeck, and Bremen, therefore, although the so-called general grant of jurisdiction is given to the administrative courts, yet in no case is it without some sort of accompanying enumeration or limitation. In Oldenburg the law provides that the administrative courts shall hear "the matters assigned to them by law or ordinance."<sup>53</sup>

*The General Nature and Extent of Administrative Jurisdiction.* There are several important questions to be answered in respect to the nature and extent of administrative jurisdiction; namely, is it both original and appellate or merely appellate? Does it include questions of law only, questions of fact and law, or questions of fact, law, and judgment? Does it concern objective rights as well as subjective rights? Does it involve decisions made outside of conflict procedure? These questions, like those already discussed, are answered very dissimilarly in the various states.

It will be remembered that in Prussia, the two lower administrative courts, the county committee (or city committee) and the district committee, act in the twofold capacity of administrative authorities and administrative courts. The difference between their judicial activity and their administrative activity lies only in the form of their procedure.<sup>54</sup> The administrative jurisdiction is practically coextensive with the whole field of administration, at least in the lower instances.<sup>55</sup> The lower courts decide on questions not only of law but also of discretion, as, for example, the granting or the refusal of liquor licenses.<sup>56</sup> When the question involves discretion, the decision of the lower instance is final. The superior administrative court, as an appellate and revising instance, decides only questions of law and fact.<sup>57</sup> An example is found in a decision of the Prussian superior administrative court in respect to police

<sup>52</sup> Lübeck, law cited above, Sections 4-14; Bremen, law cited, Sections 8-16.

<sup>54</sup> Gesetz betreffend die Verwaltungsgerichtsbarkeit (Gesetzblatt, 1906, p. 693 ff.). On the whole subject of the administrative courts in Oldenburg, see Schultzenstein, in Verwaltungsarchiv, Vol. 14 (1905-06), p. 439 ff.

<sup>55</sup> Elbe, p. 33.

<sup>56</sup> For a list of subjects covered, see Gesetz über die Zuständigkeit der Verwaltungs- und Verwaltungsgerichtsbehörden, August 1, 1883 (Ges. S., p. 237).

<sup>57</sup> *Ibid.*, Section 114.

orders under Article 127 of the law governing the state administration,<sup>58</sup> which provides that a complaint can only be brought before the superior administrative court on the ground that the contested decision, through the non-application or improper application of the existing law, has injured the complainant in his rights, or that the facts were not sufficient to justify the police authority in issuing the order. The superior administrative court has held<sup>59</sup> that in such a case the question of expediency *per se* will not be considered; but the court will examine into the question whether the order goes farther than is reasonable or necessary for the object to be accomplished.

A question of considerable importance is whether the administrative courts of Prussia may take jurisdiction where objective rights are concerned, as well as where subjective rights of the individual are concerned. This question arises particularly in respect to police orders. Although Section 127 of the law governing the state administration would seem to indicate that the courts should take jurisdiction only in respect to subjective rights, or rights that directly and specifically affect an individual, the superior administrative court has taken the position that a person who claims that he is injured in his general rights, even though not in his subjective rights, through the application of a police order may bring action before the administrative courts.<sup>60</sup>

The competence of the Bavarian administrative courts is quite different. The Bavarian administrative courts are limited to suits upon matters which are individually enumerated in the law.<sup>61</sup> These are classified into two groups, in accordance with the number of legal instances which may be involved. The first list includes matters which may pass through two or more instances. The second list consists of affairs for which the administrative court of justice has exclusive competence.<sup>62</sup> Its competence does not extend to legal affairs which may be heard before the civil or criminal courts, to any matters, even though they may be administrative orders, which

<sup>58</sup> Landesverwaltungsgesetz, GS. 1883, p. 165.

<sup>59</sup> Entscheidungen des Oberverwaltungsgerichts, Bd. 72, pp. 290, 295.

<sup>60</sup> Entscheidungen des (Pr.) Oberverwaltungsgerichts, Bd. I, p. 330; Bd. III, p. 189; Bd. V, p. 412, Bd. VII, p. 313.

<sup>61</sup> Gesetz über die Errichtung eines Verwaltungsgerichtshofes und das Verfahren in Verwaltungsrechtssachen, of August 8, 1878, Article 8.

<sup>62</sup> *Ibid.*, Articles 8-11.

are reserved to the competence of the ordinary courts, or to affairs and questions in which the administrative authorities proceed in accordance with their discretion.<sup>63</sup> The administrative court of justice decides questions of competence, and if necessary assigns an affair to the proper administrative authority.<sup>64</sup> There is thus seen in Bavaria a strong attempt to separate administrative justice from practical administration. The trial before the administrative courts must involve disputed legal claims and obligations in a specified group of affairs; it is concerned solely with personal or subjective rights and duties arising out of the application of the public law. Cases cannot be brought which merely maintain an endangered interest, or a general public interest.<sup>65</sup> When the case involves a claim that an officer has exceeded his authority or neglected his duty, the court decides this point. The public interest is represented by a state attorney who must follow the instructions of the ministries concerned.<sup>66</sup>

Since 1924 there has been but one administrative court in Württemberg, which takes jurisdiction only after an affair has been finally decided upon by the highest administrative authority. The cases coming before it must involve "claims and contracts arising out of the public law."<sup>67</sup> It passes upon decisions and orders of administrative authorities, when any one, be it an individual person, an association, or a corporation, asserts that the decision or order was not legally established, and that as a result he has been injured in a right belonging to him or has been burdened with a non-obligatory duty.<sup>68</sup> In other words, it decides only in respect to subjective rights. The limitation of the court to questions involving subjective rights excludes the examination by the court of questions of judgment or expediency, since "there exists no injurable right in behalf of the individual to a particular kind of decision." This is expressly provided for by the law, which excludes the formal complaint, "if and in so far as the administrative authorities are authorized to decide in accordance with their own judgment."<sup>69</sup>

<sup>63</sup> *Ibid.*, Articles 13-15.

<sup>64</sup> *Ibid.*, Article 14.

<sup>65</sup> *Ibid.*, Article 8.

<sup>66</sup> *Ibid.*, Articles 7, 4.

<sup>67</sup> Gesetz über die Verwaltungsrechtspflege, of December 18, 1876.

<sup>68</sup> *Ibid.*, Article 13.

<sup>69</sup> *Ibid.*, Article 13, Paragraph 2.



In Saxony the county directorates act as administrative courts. There is also one superior administrative court at Dresden.<sup>70</sup> The county directorates decide in the first instance upon specified suits of public law.<sup>71</sup> The superior administrative court decides in the second instance upon petitions (*Berufung*) and formal complaints or appeals (*Beschwerde*); and in first and final instance upon contest complaints, and complaints asking for retrial.<sup>72</sup> Of the long list of subjects (covering practically the whole of state administration) in regard to which administrative decisions may be contested,<sup>73</sup> the most interesting group, because the most general and inclusive, is "decisions made in second instance by the ministry of the interior, by the administrative circle directorate and by the district directorate, either alone or with the coöperation of the administrative circle or district committee."<sup>74</sup> The law bestows the right of contesting decisions upon "those affected"; the superior administrative court has decided that this refers only to those actually injured in their personal or subjective rights.<sup>75</sup> As has been pointed out above, such a limitation precludes questions of judgment and expediency. The only basis for the contest complaint is the claim that the decision attacked rests upon the non-application or the improper application of the valid law, or that the process preceding the decision has failed to observe an essential formality. In this connection the court may examine the facts as well as the legal opinion.<sup>76</sup>

The law of Baden defines affairs which may be brought before administrative courts as contentions concerning claims and obligations arising out of public law.<sup>77</sup> A specific enumeration which follows this general definition includes conflicts between like ordained persons or associations concerning their subjective public rights and duties, the so-called party conflicts (such as contests in regard to the rights of local citizenship, local office, and the like),

<sup>70</sup> Sections 2, 3, 4 of Gesetz über die Verwaltungsrechtspflege, Gesetz-sammlung 1900, p. 486 ff.

<sup>71</sup> *Ibid.*, Section 21.

<sup>72</sup> *Ibid.*, Section 22.

<sup>73</sup> *Ibid.*, Sections 73, 74.

<sup>74</sup> *Ibid.*, Section 73, No. 1.

<sup>75</sup> Entscheidungen des Oberverwaltungsgerichts, Bd. 13, pp. 4, 7; Bd. 21, p. 332; Bd. 22, p. 97; Bd. 23, p. 316; Bd. 24, p. 1; Bd. 27, p. 161.

<sup>76</sup> Gesetz über die Verwaltungsrechtspflege, Section 76.

<sup>77</sup> Law of June 14, 1884; Gesetz- und Verordnungsblatt, p. 187; see also ordinance of August 5, 1884.

and other similar affairs which have first been decided by an administrative authority and have then been brought by a contest petition before the administrative court of justice.<sup>78</sup> The administrative judge is forbidden to decide questions of expediency.<sup>79</sup>

The competence of the administrative courts in Thuringia is defined in the law.<sup>80</sup> The county administrative courts decide in the first instance.<sup>81</sup> The superior administrative court is given competence in four different classes of cases:

As an appellate instance against the final decisions of county administrative courts;<sup>82</sup>

It decides in first and last instance concerning the contest complaints, which those affected may bring against all orders, decrees, and decisions of administrative authorities, unless some other administrative judicial remedy is provided;<sup>83</sup>

Legal complaints asking review are decided by the superior administrative court, as to questions of law only. The non-application or misapplication of law, or neglect of an essential formality of procedure, must be claimed as a basis for review;<sup>84</sup> and

It decides any other questions which may be assigned to it by laws or ordinances.<sup>85</sup>

The law of Hesse<sup>86</sup> regarding the administrative courts follows very closely the Prussian model. There is no general statement regulating competence. The administrative courts decide upon both subjective rights of individuals or public law corporations, and also matters of judgment, such as the granting or withholding of certain permits.<sup>87</sup> Even the administrative court of justice has to decide not only upon questions of law and fact, but also upon questions

<sup>78</sup> *Ibid.*, Sections 2 and 3.

<sup>79</sup> *Ibid.*, Section 4, par. 4.

<sup>80</sup> Law of May 30, 1923, Section 27.

<sup>81</sup> *Ibid.*, Section 28.

<sup>82</sup> *Ibid.*, Section 68.

<sup>83</sup> *Ibid.*, Section 31, par. 1. As in other states having this legal provision, only injuries to subjective rights may be claimed, and questions of judgment or expediency will not be considered.

<sup>84</sup> *Ibid.*, Section 32.

<sup>85</sup> *Ibid.*, Section 29.

<sup>86</sup> Gesetz, betreffend die Verwaltungsrechtspflege, of July 8, 1911.

<sup>87</sup> *Ibid.* See also a law of April 27, 1881; law of May 29, 1884; law of June 14, 1887; law of September 30, 1899; law of March 29, 1890; law of June 16, 1902.

of judgment.<sup>88</sup> Certain acts of permission and refusal are performed by the courts themselves.<sup>89</sup>

The competence of the administrative courts of Hamburg, which is bestowed by a general clause<sup>90</sup> with enumerations by way of example of the most important affairs,<sup>91</sup> covers only controversies as to subjective rights and duties arising out of the public law. The courts decide contests against decrees or orders of administrative authorities, as well as other public cases which are not assigned elsewhere by law.<sup>92</sup> They do not decide questions of judgment.<sup>93</sup> However, the misuse of judgment is a violation of law and may therefore be reviewed by the administrative courts.<sup>94</sup>

The law of Mecklenburg-Strelitz<sup>95</sup> regulates the competence of the administrative courts according to the model of the Prussian law. There is no clear distinction between the administrative affairs which may become the subjects of suits, and other administrative affairs; and no fundamental limitation of the activities of administrative judges in the application of the law.<sup>96</sup>

The Oldenburg law concerning the administrative courts<sup>97</sup> gives a very general definition of the matters subject to administrative adjudication, which makes it possible to assign to the administrative courts any matter of administration in respect to which it is considered that the formal process is better adapted than is the customary administrative procedure.<sup>98</sup> No distinction of jurisdiction is made between matters of law and matters of judgment.

The administrative courts in Brunswick decide cases designated by statute, concerning claims and obligations arising out of the

<sup>88</sup> Entscheidungen des Verwaltungsgerichtshofs, Bd. 5, pp. 75, 77, 99.

<sup>89</sup> Law of 1911, Article 131, No. 22; Article 20, No. 2.

<sup>90</sup> Gesetz über die Verwaltungsgerichtsbarkeit of November 2, 1921 (Gesetz- und Verwaltungsblatt, p. 595 ff.).

<sup>91</sup> *Ibid.*, Sections 10-13.

<sup>92</sup> *Ibid.*, Section 9.

<sup>93</sup> *Ibid.*, Section 46: Entscheidungen des Oberverwaltungsgerichts, Bd. 1, pp. 11, 69, 86.

<sup>94</sup> Entscheidungen, Bd. 1, pp. 10, 84, 93.

<sup>95</sup> Law of August 17, 1922, Amtl. Anzeiger, p. 473.

<sup>96</sup> See Elbe, p. 50.

<sup>97</sup> Gesetz betreffend die Verwaltungsgerichtsbarkeit of May 1, 1906 (GesBl., p. 963 ff.).

<sup>98</sup> See discussion by Schultzenstein, Verwaltungsarchiv, Bd. 14, p. 441.

public law.<sup>99</sup> Certain conditions must be met as a prerequisite to bringing any case before the administrative courts; namely:

Questions of administrative necessity and expediency must have been decided previously by the administrative authorities, "with the exception that there has been no formal complaint to the state ministry, and under the observation of the regular time limits and forms";<sup>1</sup>

The complaint must be based upon an allegation "that the contested decision rests upon a non-application or an improper application of the existing law, or, that the factual circumstances were not at hand, which would have justified the deciding authority in his decision," and that the decision injured the complainant in his subjective rights.<sup>2</sup> Questions of expediency are therefore excluded;

Finally, the complaint must involve a specific affair given over to the administrative courts by a rather long and detailed enumeration of affairs of administrative contentious jurisdiction<sup>3</sup> contained in the law on administrative adjudication, or by other laws.

The law of Anhalt respecting the administrative courts and the administrative conflict procedure, makes a partial enumeration of the affairs that are to be brought before the administrative courts, and also provides that the jurisdiction shall be regulated by special laws.<sup>4</sup> The wording does not seem to limit the competence of the courts to subjective rights, or to the mere legal examination of affairs that come before them, but appears to indicate that questions involving objective rights and questions of discretion could also be handled by them.

The law of Bremen concerning administrative jurisdiction<sup>5</sup> establishes the competence of the administrative courts by a general formula and examples of the most important matters which are covered by it. The courts are authorized to examine the legality of contested orders and decrees of the administrative authorities, but not discretionary matters unless discretion has been misused. The ground of complaint is not limited to the injury of a subjective

<sup>99</sup> Gesetz betreffend die Verwaltungsrechtspflege of March 5, 1895 (Gesetz- und Verordnungs-Blatt, p. 79 ff.).

<sup>1</sup> *Ibid.*, Section 8.

<sup>2</sup> *Ibid.*, Section 9.

<sup>3</sup> *Ibid.*, Sections 45-70.

<sup>4</sup> Law of March 7, 1888, Gesetz-Sammlung, p. 41 ff.

<sup>5</sup> Gesetzblatt, 1924, p. 23 ff.

right. Before a complaint is brought before the court, aid must have been sought from the administrative authorities without results.<sup>6</sup>

The competence of the administrative courts of Lippe is regulated by special law.<sup>7</sup> These courts decide in general upon complaints against decrees or decisions of administrative authorities.<sup>8</sup> Particular matters may be assigned to the administrative courts by statute. The cases coming before them must always be based upon the claim that a subjective right has been injured; and complaints as to questions of expediency or the judgment of administrative officers are excluded.

In Lübeck the competence of the administrative courts is regulated by a general clause and an enumeration of examples.<sup>9</sup> Contest proceedings may be instituted against all official orders which the laws do not particularly establish as final. Before the plaintiff can ask redress before the administrative courts he must have applied to the administrative authorities without results.<sup>10</sup> He must prove that he has been injured in a subjective right and must maintain that the existing law was not applied or was improperly applied, or that the facts were not such as to warrant the issuing of the order.<sup>11</sup> Consequently, questions of discretion are excluded from the jurisdiction of the court.

In the law of Mecklenburg-Schwerin the material competence of the administrative courts is listed in detail, as covering certain special instances where complaints are permissible.<sup>12</sup> The plaintiff must prove that the contested order was not legally established, and that as a consequence he has been injured in a right belonging to him or burdened with a duty not obligatory upon him; that is, the complaint must be based upon the infringement of a subjective

<sup>6</sup> *Ibid.*, Sections 8-16, 50.

<sup>7</sup> Gesetz, die Verwaltungsgerichte und das Verwaltungsstreitverfahren betreffend, of February 9, 1898 (Gesetz-Sammlung, p. 281 ff.).

<sup>8</sup> *Ibid.*, Section 3.

<sup>9</sup> Gesetz über die Verwaltungsgerichtsbarkeit, of December 12, 1916 (L. Gesetze und Verordnungen, Bd. 4, p. 46), Sections 4, 5.

<sup>10</sup> *Ibid.*, Section 40, par. 1.

<sup>11</sup> *Ibid.*, Section 38.

<sup>12</sup> Gesetz über die Verwaltungsgerichtsbarkeit (Regierungs-Blatt, 1922, p. 211), Sections 11, 12, for local competence: Sections 13-34 for material competence.

right. Discretionary decisions are not contestable. The examination of the court is limited to questions of legality.<sup>13</sup>

*Administrative Suits for the Protection of the Objective Legal Order.* It has been seen that controversies before the administrative courts fall into two general groups: (1) Those instituted for the protection of the objective legal order, that is, for keeping all administrative acts within the law, whether individuals are injured by these acts or not; and (2) those instituted for the protection of subjective or personal rights. Although it is true that in a majority of states the administrative courts do not pass upon questions of objective law, yet it is necessary to examine one or two instances where they do so, in order to see what kind of cases fall under this heading.<sup>14</sup>

In Prussia, for example, administrative adjudication is not limited to questions of personal rights. Here the state administrative officers have the authority to contest the conclusions of a collegiate administrative authority, by way of administrative contentious procedure, with the state as complainant and the administrative authority as defendants; or to bring action against the decisions of communal corporations, with the effect of suspending their execution. The county director, the district president, and the provincial president may bring the acts of the county committee, the district committee, and the provincial committee before the administrative courts to test their legality.<sup>15</sup> State authorities may suspend the acts of the organs of local administration, and the latter may then complain against this procedure to the administrative courts. The communal executive may therefore complain in respect to the acts of the council, the mayor in regard to the acts of the city council, the county director with regard to the acts of the county organs of local administration, and the provincial director in respect to the acts of the provincial organs of local administration.<sup>16</sup>

<sup>13</sup> *Ibid.*, Section 17.

<sup>14</sup> See G. Meyer, *Lehrbuch des Deutschen Verwaltungsrecht*, Vierte Auf. p. 86; James, *Principles of Prussian administration*, p. 177.

<sup>15</sup> *Landgemeindeordnung*, July 3, 1891 (Ges. Sammlung, p. 233 ff.). Section 6; *Kreisordnung*, December 13, 1872 (Ges. Sammlung, p. 155), Section 133. See G. Meyer, p. 86.

<sup>16</sup> LGO., Section 140; *Zuständigkeitsgesetz*, August 1, 1883 (Ges. Sammlung, p. 237 ff.), Section 15; *Kreisordnung*, Section 187; *Provinzialordnung*, June 29, 1875, Ges. S., p. 118.

In Baden the chairman of the district council may contest decisions of the council on the ground of incompatibility with law or with public interest, by bringing the case before the administrative court of justice. The communal corporations are also authorized to bring complaints into the administrative court, when their decisions are repealed by the state supervisory authorities as contrary to law. The legal ground upon which the acts of the local authorities can be contested, or objections sustained, is the claim that the agency concerned has exceeded its powers.<sup>17</sup>

The laws of Hesse, Mecklenburg-Strelitz, Oldenburg, and Anhalt, also recognize to some extent the right to seek protection of the objective legal order through the administrative courts.

In many states not only private individuals, but officers and public corporations as well, are entitled to bring certain matters before the administrative courts. Thus, quite often these courts have jurisdiction over controversies as to the legal incumbency of an office, the rights of officers, salaries, and the like.

Public corporations, especially the communal associations, may bring suits for three general lines of purposes :

- For establishing their existence as public corporations or communal associations, their boundaries, and their powers ;<sup>18</sup>
- For the purpose of attacking administrative orders which lay upon them unauthorized burdens or duties ;<sup>19</sup>
- For the securing of rights belonging to the corporation or communal association. Such rights have to do with the independent ordering of certain affairs or the exercise of certain powers, claims against the state for the cost of certain branches of administration, and the like.<sup>20</sup> Controversies between communal associations involving questions of settlement when

<sup>17</sup> Gesetz, die Verwaltungsrechtspflege betreffend, of June 14, 1884 (Gesetz- und Verordnungs-Blatt, p. 197 ff.), Section 4.

<sup>18</sup> Prussia, Zuständigkeitsgesetz, Sections 9, 21, 26; Bavaria, Gesetz, betreffend die Errichtung eines Verwaltungsgerichtshofes, u. s. w., Article 8, Section 25; Baden, Verwaltungsgerichtsgesetz, Section 2, Nos. 6 and 24; Lippe, Gesetz, betreffend die sachliche Zuständigkeit der Verwaltungsgerichte, Section 1, No. IX; Anhalt, Zuständigkeitsgesetz, Section 25.

<sup>19</sup> Bavaria, Gesetz, betreffend die Errichtung eines Verwaltungsgerichtshofes, u. s. w., Article 10, Nos. 1 and 2; Württemberg, Gesetz über die Verwaltungsrechtspflege, Article 13; Baden, Verwaltungsgerichtsgesetz, Section 4, No. 2; Lippe, *lex supra cit.*, *ibid.*

<sup>20</sup> Württemberg, Ges. über die Verwaltungsrechtspflege, Article 10, No. 16; Baden, Verwaltungsgerichtsgesetz, Section 3, Nos. 4 and 5.

changes in territory have taken place, may also be brought before the administrative courts.<sup>21</sup>

Finally, the administrative courts are given quite wide jurisdiction in respect to certain affairs of the churches, such as claims of membership in a church association, and questions of the rights and duties appertaining to membership in any religious association.<sup>22</sup>

*Particular Fields of Jurisdiction.* The administrative acts which affect individuals are usually commands and prohibitions. These may limit the action of the individual in the interest of general public safety and welfare, as by requiring the provision of fire escapes, the cutting of weeds on vacant lots, etc. Such acts of administrative authorities are as a rule police orders. But other burdens may also be laid upon the individual, such as fees, taxes and levies, orders to quarter troops, to provide supplies or means of transportation, to assist the public authorities, and the like. When these duties are imposed by an authority which has no power to take such action, or when they are imposed illegally in any way, suit may generally be brought before the administrative courts. The provision of such protection, although mandatory because of Article 107 of the national Constitution, is not uniform in all the states, nor is the manner of granting it. Thus, in Württemberg a general clause gives the right to institute suit before the administrative courts as a result of every unauthorized compulsion of this kind.<sup>23</sup> In Prussia and Baden a general clause provides for similar protection in regard to the whole territory of the police administration.<sup>24</sup> In several other states, however, action in such cases can only be brought before the administrative courts upon the ground of special provisions.<sup>25</sup>

<sup>21</sup> See for example, Prussia, Zuständigkeitsgesetz, Sections 2, 8, 25, 140; Bavaria, *lex supra cit.*, Articles 11, 12; Baden, Verwaltungsgerichtsgesetz, Section 3, No. 10.

<sup>22</sup> Bavaria, Gesetz, betreffend die Errichtung eines Verwaltungsgerichtshof, u. s. w., Article 8, Nos. 37 and 39; Article 10, No. 13; Baden, Verw. Ger. Ges., Section 2, No. 24; Württemberg, Gesetz über die Verwaltungsrechtspflege, Article 10, No. 17.

<sup>23</sup> Regierungsblatt, 1876, p. 485 ff., Article 13.

<sup>24</sup> Prussia, Gesetz über die Zulässigkeit des Rechtsweges in Beziehung auf polizeiliche Verfügungen, of May 11, 1842 (G.S.S. 192, Sections 1 ff.): Baden, Gesetz den Verwaltungsgerichtshof u. s. w., betreffend, of February 24, 1880, Section 4.

<sup>25</sup> See for example Bavaria, Gesetz- und Verordnungs-Blatt, 1878, p. 369; Gesetz, betreffend die Errichtung eines Verwaltungsgerichtshofes und das Verfahren in Verwaltungsrechtssachen, Article 8, Nos. 10 and 11.



Another type of administrative action which may injure the individual is the withholding or refusal of rights or privileges, permissions, concessions, or grants, such as the right to engage in a certain kind of business, patent rights, building rights, rights of citizenship, and so on. As a rule the individual affected has no recourse to the administrative courts when the action concerned is discretionary, since such recourse is generally limited to cases "where the withholding of the rights concerned results not from the discretion of the administrative authorities, but only from grounds specified in the law."<sup>26</sup>

The administrative complaint may sometimes be used very much as the mandamus is employed elsewhere, to compel an officer to perform acts required of him by law, such as the granting of permits, the certification of documents, and the like. In case officers withhold or refuse certain services to which the individual has a legal right, such as those just mentioned, or claims to compensation for the deprivation of property rights, claims arising out of workmen's insurance, or the right of admission to public institutions,<sup>27</sup> the affair may be brought before the administrative courts. It is interesting to note that the German system does not recognize special writs corresponding to our mandamus and injunction, but that affairs involving the compelling of administrative action or the prevention of administrative action are handled through the ordinary processes before the administrative courts.

The subjects over which the administrative courts have jurisdiction vary so much in the different states and cover so many fields of activity that it is impossible to list them. Two or three examples may serve to illustrate the extent and variety of these subjects.

The Prussian law regarding the competence of the administrative authorities and the administrative judicial authorities<sup>28</sup> specifies about two dozen subjects of jurisdiction, which include affairs administered by provinces, counties, official districts, urban and rural communes, questions of public charity, school affairs, the obligations of savings banks, police questions as to highways, waterways,

<sup>26</sup> G. Meyer, p. 88.

<sup>27</sup> See Prussian Landesverwaltungsgesetz, G.S. 1883, p. 165, Section 127; G. Meyer, p. 89.

<sup>28</sup> Gesetz über die Zuständigkeit der Verwaltungs- und Verwaltungsgerichtsbehörden, of August 1, 1883.

dikes, fishing and hunting, administrative controversies respecting chambers of commerce, trading corporations and exchanges, the fire fighting system, building regulations, the condemnation of property, the legal status of persons, citizenship, and taxation. Each of these subjects is dealt with in some detail in the law. Various other laws add subjects of jurisdiction.

The Bavarian law <sup>20</sup> lists some forty affairs that come under the competence of the administrative courts. Among these are franchise rights, permits or licenses for carrying on business, the compulsory taking of real estate, the use of waters, irrigation and drainage projects, protection of riparian land and protection against floods (in so far as the issue does not involve county or state contributions), the surveying of real estate, the exercise of hunting privileges, the denial or withdrawal of hunters' licenses, communal surveys and boundaries, communal voting rights, claims to general or particular use of communal property and the duties in connection therewith, the apportionment of communal lands, obligations of participation in communal burdens, including assessments and other burdens for poor relief, obligation for the payment of certain communal taxes, the use of communal institutions upon the payment of especial compensation therefor, the rights of franchise and of election in respect to communal offices, the validity of such elections, public property in a road, bridge, or canal, with the rights appertaining thereto, obligations in respect to the establishment and maintenance of the public roads, bridges and other means of conveyance, legal claims in respect to the use or misuse of funds or foundations, rights in respect to the administration of endowments and the bestowal of the usufruct of funds, the rights and duties contingent upon entrance into church administration or withdrawal from the same, the obligations of participation in the school assessment, or other burdens for school purposes, claims respecting teaching positions in public schools and other educational establishments, and certain insurance affairs.

Many other special subjects of jurisdiction are assigned by law to the administrative courts in the various states.

This brief survey of the competence of state administrative courts shows that no two states answer all questions of jurisdiction in exactly the same way. Although a majority of the states

<sup>20</sup> Bayerisches Gesetz- und Verordnungsblatt, 1878, p. 369 ff.

have adopted the method of granting jurisdiction by enumeration, there are great differences of form and content in the application of this method. Bavaria and Hesse have an exclusive enumeration, while Prussia, Baden, Brunswick, Oldenburg, and Anhalt enumerate many matters but also establish a general formula to cover certain fields of administrative jurisdiction, such as police orders and taxes.<sup>30</sup>

Württemberg and Saxony come closest to the principle of establishing the jurisdiction of the administrative courts by means of a general clause. Even in Württemberg,<sup>31</sup> however, individual provisions establish certain classes of suits; and in Saxony there are certain limitations upon the general clause, as well as other more specific grants of jurisdiction. Hamburg, Bremen, Lübeck, and Brunswick have general clauses accompanied by enumerations that are either illustrative in nature, or inclusive of the more important subjects.

The jurisdiction of the administrative courts is limited in most states to questions of law and fact, and definitely withheld from questions involving administrative discretion. In a few states, however, including Hesse, Mecklenburg-Strelitz, and Oldenburg, and Prussia insofar as the two lower instances are concerned, they decide not only questions of law and fact but questions of discretion as well.

As a rule the controversies decided by the courts must concern subjective rights. In Prussia, Hesse, Mecklenburg-Strelitz, Oldenburg, and Anhalt, however, the administrative courts also decide certain questions involving objective rights. This is true also to a slight extent in Baden.

In several states, including Thuringia, Brunswick, Bremen, and Lübeck, a complaint can only be raised in the administrative courts after the administrative authorities have passed finally upon it; that is, when it has gone through one or more administrative instances.

*The Parties Before the Administrative Courts.* The state laws governing the parties that may contend in administrative conflict procedure differ in several respects. There is no general rule com-

<sup>30</sup> See Georg Meyer, p. 86; Fleiner, p. 229.

<sup>31</sup> Württemberg law, Sections 10, 13. See G. Meyer, p. 86.

mon for all of the states.<sup>32</sup> Where private individuals, be they individual persons, or corporations, are opposed to each other, in all cases they occupy the position of parties to the process.<sup>33</sup> When a public authority is concerned in the suit, either because it desires to establish a right or enforce a power, or because its orders or acts are attacked, in Prussia and Baden it becomes a party to the process and can be either complainant or defendant. In Bavaria and Württemberg, on the contrary, controversies over the orders of authorities are handled by the method of deciding upon a complaint rather than by a suit. In these states the public authority "does not take the position of a party to the process, but the position of a subordinate administrative organ, against whose decision recourse will be had to a higher instance."<sup>34</sup> According to Fleiner, however, this difference is relatively unimportant, since even in those states where the public authority is not permitted to appear as a party to a suit before the administrative courts, it is provided that the public interest shall be represented by a special officer.<sup>35</sup> Such officers may also be provided even where the state or its agents may be a party. Thus, as has been pointed out before, Bavaria has a special states' attorney in the administrative court of justice;<sup>36</sup> and in several of the other states a commissioner of the ministry concerned may represent the public interests before the administrative courts.<sup>37</sup>

*Procedure Before the Administrative Courts.* Procedure before the administrative courts is based largely on the provisions of the civil process code, although many individual differences appear

<sup>32</sup> Georg Meyer, *Lehrbuch des Deutschen Verwaltungsrechts*, Vierte Auflage, p. 92. For the general subject of parties before the administrative courts see Otto Mayer, *Deutsches Verwaltungsrecht*, Dritte Auf. Bd. I, p. 138 ff.; Fleiner, *Institutionen des Deutschen Verwaltungsrecht*, Dritte, vermehrte Auf. (1913); Zorn, *Verwaltungsarchiv*, II, p. 100; Schultzenstein, *Verwaltungsarchiv*, II, 148, and XII, 112; Friedrichs, *Verwaltungsarchiv*, VI, 400; and review of Popitz, *Der Parteibegriff in preuss. Verwaltungsstreitverfahren*, *Verwaltungsarchiv*, XV, 475, by Schultzenstein.

<sup>33</sup> G. Meyer, p. 92.

<sup>34</sup> *Ibid.*, pp. 92-93. See also Bavarian Law, Articles 10, 45; Württemberg Law, Articles 24, 59, 61.

<sup>35</sup> *Op. cit.*, p. 251.

<sup>36</sup> VGV. Articles 4, 5, 41.

<sup>37</sup> Württemberg, *Verwaltungsrechtspflegegesetz*, Articles 20, 43, 52; Prussia, *Landesverwaltungsgesetz*, Section 74; Hesse, *Verwaltungsrechtspflegegesetz*, Articles 78, 89; Baden, *Verw. Ger. G.*, Section 8; Saxony, law cited, Section 26.

from state to state. Departures from the civil process code are largely conditioned by the fact that in administrative legal conflicts the public interest is in question.<sup>38</sup>

As in the civil process, the principle of the two-sided hearing is applicable, with the difference that before the decision not only the parties but also the representatives of the public interest must be heard.<sup>39</sup> Practically all of the states guarantee publicity<sup>40</sup> and verbal discussion, with certain limitations and exceptions. There is no attempt, however, to apply all principles governing the trial of civil suits to cases before the administrative courts. One important difference lies in the fact that "not only the parties in the narrower sense, but also the representative of the public interest is entitled to enter proposals."<sup>41</sup> As a rule, the judge of the administrative court has to investigate the facts independently.<sup>42</sup>

Proceedings are instituted before an administrative court of first instance by entering a complaint in due form.<sup>43</sup> If the first investigation makes the situation clear, the court may issue a preliminary decision without the formality of a trial. Either party, however, may object to the decision and demand a trial of the case.<sup>44</sup> Sometimes the court may withhold judgment and order the defendant to

<sup>38</sup> G. Meyer, p. 93.

<sup>39</sup> Pruss. LVG., Sections 71, 74, 80; Bavaria, Gesetz über die Errichtung eines Verwaltungsgerichtshofes, u. s. w., Articles 36, 42; Saxony, Verwaltungsrechtspflegegesetz, Section 12; Württemberg, Verwaltungsrechtspflegegesetz, Sections 18, 20; Baden, Verwaltungsgerichtshofgesetz, Sections 5, 8; Hesse, Gesetz, betr. die Verwaltungsrechtspflege, Article 91; Mecklenburg-Schwerin, Gesetz über die Verwaltungsgerichtsbarkeit, Section 39; Lippe, *lex. cit.*, Section 29.

<sup>40</sup> Prussia, LVG., Section 72; Bavaria, *lex. cit.*, Articles 28, 34, 41; Saxony, *lex. cit.*, Section 26; Württemberg, *lex. cit.*, Article 21; Baden, *lex. cit.*, Section 6; Hesse, *lex. cit.*, Article 25; Brunswick, Gesetz, betr. die Verwaltungsrechtspflege, Section 25; Anhalt, Gesetz über die Verwaltungsgerichte, u. s. w., Section 39; Mecklenburg-Schwerin, Gesetz über die Verwaltungsgerichtsbarkeit, Sections 36, 40.

<sup>41</sup> Georg Meyer, p. 94.

<sup>42</sup> Prussia, LVG., Section 63; Bavaria, *lex. cit.*, Articles 14, 20, 27, 36, 41; Saxony, *lex. cit.*, Section 25; Württemberg, *lex. cit.*, Article 17; Baden, *lex. cit.*, Section 5; Mecklenburg-Schwerin, *lex. cit.*, Section 55; Lippe, *lex. cit.*, Section 31; Brunswick, *lex. cit.*, Section 29.

<sup>43</sup> Prussia, LVG. Section 65; Württemberg, *lex. cit.*, Articles 24, 49; Baden, Verw. Ger. G. Section 17; Anhalt, Gesetz die Verwaltungsgerichts und das Verwaltungsstretitverfahren betreffend, Section 30; Bavaria, *lex. cit.*, Article 22.

<sup>44</sup> Prussia, LVG. Sections 64, 67; Württemberg, *lex. cit.*, Articles 26, 27.

prepare a written answer and to furnish all documentary evidence. The judgment is then based upon these representations and evidence, unless one of the parties demands a verbal hearing or the court believes that one is needed. Under such circumstances, the parties are summoned to appear at the hearing,<sup>45</sup> and informed that if they fail to do so, the case will be decided in accordance with the facts and circumstances available. Third persons whose interests will be affected by the decision may be summoned upon the proposal of the parties concerned or upon the option of the court.<sup>46</sup>

Formal trials are conducted very much as are civil suits before the ordinary courts.<sup>47</sup> In the oral proceedings the parties and their counsel must be heard. They may modify their original proposals or declarations if in the opinion of the court the opposing party is not thereby prejudiced or the proceedings unduly delayed.<sup>48</sup> The parties have the right to introduce evidence and to present witnesses, and the chairman of the court is bound to assist in bringing out all relevant facts by asking questions or making comments upon the evidence.<sup>49</sup> The administrative courts may themselves undertake any investigations which promise to throw light upon the matter, may summon and examine witnesses, and punish for failure to furnish information.<sup>50</sup> Except to protect the public interest or morality, the sessions of the administrative courts are usually open.<sup>51</sup>

<sup>45</sup> Prussia, LVG. Section 68; Anhalt, *lex cit.*, Section 35; Bavaria, *lex cit.*, Article 35; Württemberg, *lex cit.*, Article 50; Hesse, *lex cit.*, Section 53.

<sup>46</sup> Prussia, LVG. Section 70; Württemberg, *lex cit.*, Article 30; Baden, *lex cit.*, Section 21; Hesse, *lex cit.*, Article 50; Mecklenburg-Schwerin, *lex cit.*, Section 52.

<sup>47</sup> Prussia, Org. G. Sections 71, 72; Bavaria, *lex cit.*, Articles 36-38; Württemberg, Articles 32-35; Baden, Sections 22, 27; Hesse, Article 27.

<sup>48</sup> Prussia, LVG. Section 71; Anhalt, *lex cit.*, Section 38; Brunswick, *lex cit.*, Section 24; Mecklenburg-Schwerin, *lex cit.*, Section 53; Saxony, *lex cit.*, Section 44. In Württemberg new assertions of fact and new evidence can only be considered when the authority against whose orders the complaint is raised, or its representative, is willing. *Lex cit.*, Article 62.

<sup>49</sup> Prussia, LVG. Section 71; Saxony, *lex cit.*, Section 49; Mecklenburg-Schwerin, *lex cit.*, Section 53; Anhalt, *lex cit.*, Section 38; Brunswick, *lex cit.*, Section 24.

<sup>50</sup> Prussia, LVG. Sections 76, 77; Bavaria, *lex cit.*, Article 20; Württemberg, *lex cit.*, Articles 36, 37; Saxony, *lex cit.*, Sections 51, 52; Anhalt, *lex cit.*, Section 43; Brunswick, *lex cit.*, Section 29; Mecklenburg-Schwerin, *lex cit.*, Section 55.

<sup>51</sup> Prussia, LVG. Section 72.

The court decides, on the basis of all facts that are either brought out in the testimony or developed from its independent investigation, according to its free judgment. However, the decision may not go beyond the requests of the complaint by which the suit was instituted.<sup>52</sup> At the conclusion of the trial a verdict is prepared, containing both the decision and the grounds therefor. It is announced publicly, and communicated to the parties concerned.<sup>53</sup>

It must be remembered that formal trials before the administrative courts represent only one of two possible methods by which acts of the administrative authorities can be contested. The other method is that of complaint against the act of a lower authority, to a higher one, which decides in the capacity of administrative court, but without the formal process. One or more appeals to higher administrative instances are usually allowed. This method is applicable in the states where the lower administrative courts are identical with, or closely related to, the regular organs of administration. It is known as decision procedure, in distinction from the formal suit, which is called conflict procedure.

*Remedies Against the Decisions of Administrative Courts.* The legal remedies that may be employed against the decisions of the administrative courts vary in accordance with the number of instances, the kind of judicial organization, and so on.

In Prussia the legal remedies available are of two sorts, ordinary and extraordinary.<sup>54</sup> The ordinary remedies include the petition, the review, and the appeal or formal complaint. The extraordinary remedies consist of the remanding of the case to the previous status, and the retrial.<sup>55</sup> Appeals against judgments of the city or county

<sup>52</sup> Prussia, Org. G. Sections 66, 68, 71, 76-79; Bavaria, *lex cit.*, Sections 19-21, 27; Württemberg, *lex cit.*, Articles 36, 37, 39, 68; Saxony, *lex cit.*, Section 54; Baden, *lex cit.*, Sections 23, 24, 29; Hesse, *lex cit.*, Article 60; Anhalt, *lex cit.*, Section 46; Brunswick, *lex cit.*, Section 32; Mecklenburg-Schwerin, *lex cit.*, Section 58.

<sup>53</sup> Prussia, Org. G., Section 81; Bavaria, *lex cit.*, Article 21; Saxony, *lex cit.*, Sections 56, 58; Württemberg, *lex cit.*, Articles 39, 42, 68; Baden, *lex cit.*, Sections 30, 31; Hesse, *lex cit.*, Articles 63, 64; Anhalt, *lex cit.*, Section 48; Brunswick, *lex cit.*, Section 34; Mecklenburg-Schwerin, *lex cit.*, Section 60.

<sup>54</sup> For this subject, see LVG. Sections 82-112; Bartels, *Verwaltungsstreitverfahren*, p. 22 ff.; Hatschek, *Lehrbuch* (3d and 4th ed.), 401 ff.; G. Meyer, p. 95 ff.; Brauchitsch, *Die preussischen Verwaltungsgesetze* (1925 ed.), Vol. I, p. 75 ff.

<sup>55</sup> LVG. Sections 82-112.

committee go to the district committee, and appeals against judgments of the district committee go to the superior administrative court.<sup>56</sup> Review by the superior administrative court can be asked in Prussia only upon two principal grounds:<sup>57</sup> Non-application or misapplication of the existing law, and essential errors.

Essential errors include the following:<sup>58</sup>

- When one party is not informed of the claims of the opposing party;
- When a party has no opportunity to express itself upon the evidence on which the judge bases his decision;
- When the judge making the preliminary examination does not declare which party's claims he considers proved or unproved, or important or unimportant;
- When an officer personally concerned in any matter represents the authority against which complaint is brought.

In the civil process the reviewing judge may not go beyond the petitions of the parties,<sup>59</sup> but in administrative procedure he may do so.<sup>60</sup> Usually the civil judge when reviewing a case may only annul the decision and send the matter back to the preceding instance, for different treatment and decision; but the superior administrative court when reviewing can itself decide in the matter if the facts seem so clear as to warrant a decision.<sup>61</sup> The superior administrative court may also, as a reviewing instance, consider new material.<sup>62</sup> On the grounds of public interest, the review can be instituted by persons other than the parties to the suit in the lower instance, particularly by the chairman of the district committee.<sup>63</sup> Public interest is considered as being involved, if a principle of great significance to the administration may be established or if questions of the organization of authorities or of their competence are to be discussed.<sup>64</sup> When the case under review does

<sup>56</sup> LVG. Sections 82 ff.

<sup>57</sup> LVG. Sections 93, 94.

<sup>58</sup> This summary is made by Hatschek (Lehrbuch, p. 402) on the basis of decisions rendered by the superior administrative court of Prussia.

<sup>59</sup> ZPO. Section 559.

<sup>60</sup> LVG. Section 97.

<sup>61</sup> LVG. Section 98. On this subject, see Hatschek, Lehrbuch (3d and 4th ed.), p. 403.

<sup>62</sup> LVG. Section 97.

<sup>63</sup> LVG. Section 93.

<sup>64</sup> Hatschek, p. 404.



not seem clear and ready for judgment, the superior administrative court can remand it to the proper instance and order a rehearing or a continuation of the process, in order to correct any essential errors.<sup>65</sup>

The appeal or formal complaint (Beschwerde) against orders of the administrative court which affect the process may be made at any time before the conclusion of the case. It is entered in the court whose orders are attacked, and decided finally by the next higher administrative court.<sup>66</sup>

Complaints for restitution and annulment are based on the same grounds as in the civil process,<sup>67</sup> and may be entered:

- When the court was not legally established;
- When a judge participated in the decision, who was excluded from the exercise of the judicial office;
- When a judge participated in the decision, although objection was made to him on grounds of partiality, and the objection was sustained; and
- When a party was represented in the process in a way not conformable to the provisions of the law, in so far as the party had not expressly or tacitly consented to the conduct of the process.

The superior administrative court is exclusively competent for this class of complaints.<sup>68</sup>

Restoration to the former status can be proposed by anyone who is prevented from acting within the necessary time by natural causes or by other conditions or events which could not be foreseen. Only the court which would have had jurisdiction if the case had been tried within the proper time, may decide as to the motion for restoration.<sup>69</sup>

Bavaria and Württemberg provide that in certain cases appeals may be taken from the decision of a subordinate administrative authority, to the highest administrative court.<sup>70</sup> In Bavaria the highest administrative court has the character of a purely reviewing or final instance, since it decides upon the grounds of the factual re-

<sup>65</sup> LVG. Section 99.

<sup>66</sup> LVG. Sections 110, 111.

<sup>67</sup> LVG. Section 100; ZPO. Section 579.

<sup>68</sup> LVG. Section 100.

<sup>69</sup> LVG. Section 112.

<sup>70</sup> Bavaria, *lex cit.*, Article 22; Württemberg, *lex cit.*, Article 43.

lationships already established in the lower instance.<sup>71</sup> This is not true in Württemberg, where new facts may be brought in and new evidence introduced, when the authority against whose orders the complaint is raised, or its representative, consents thereto.<sup>72</sup> In Saxony appeal lies against the decisions of the administrative circle directorate to the superior administrative court, except such decisions as the law declares to be final. Formal complaint to the superior administrative court is permitted when the administrative circle directorate or its chairman refuses to commence or to continue procedure.<sup>73</sup>

In Baden an appeal lies to the administrative court of justice against the final decisions of the district council, not only for the parties involved, but also (upon the grounds of public interest) for the chairman of the council.<sup>74</sup> Formal complaints against decisions of the district council or of its chairman lie to the administrative court of justice in a certain number of cases enumerated in the law.<sup>75</sup> In Mecklenburg-Schwerin appeal lies against the decisions of the district and city administrative courts, to the state administrative court. Before the appellate court the affair will be handled *de novo*. A retrial may also take place in the state administrative court under the same circumstances as those governing the request for nullification or restitution under the civil process.<sup>76</sup>

In Lippe, appeal to the superior administrative court may be brought by a party concerned, against the decisions of the county administrative court. In certain cases governed by the law, appeal may also be brought upon grounds of public interest by the chairman of the county administrative court, as well as by the regular commissioner. Against final decisions having the force of law, the complaint and the request for retrial are permissible under the same circumstances which govern the complaint for nullification in civil process.<sup>77</sup>

The law of Brunswick provides that against the decision of the chairman of the administrative authority, a complaint lies to the

<sup>71</sup> *Lex cit.*, Article 40.

<sup>72</sup> *Lex cit.*, Article 62.

<sup>73</sup> *Lex cit.*, Sections 62, 70.

<sup>74</sup> *Lex cit.*, Section 32.

<sup>75</sup> *Lex cit.*, Section 40.

<sup>76</sup> *Lex cit.*, Section 71.

<sup>77</sup> *Lex cit.*, Sections 36, 46.

administrative court of justice; and against the decision of the administrative court of justice, within ten days a protest can be made regarding which the same court decides finally. Against the final judgment of the administrative court of justice the complaint for a retrial may be entered, under the same conditions as those governing in the civil law and civil process in respect to the complaint for nullification or restitution.<sup>78</sup> For the retrial, the administrative court of justice is exclusively competent. It tries the case *de novo*.

Against the final judgments and decisions of the county administrative court in Anhalt, an appeal lies to the state administrative court. The right to appeal is given both to the parties concerned, and also (on the grounds of public interest) to the chairman of the county or city committee. From the final decisions of the state administrative court an appeal lies to the superior administrative court. The motion for the appeal made by the chairman of the county or the city committee on behalf of the administration is brought before the state administrative court by a commissioner appointed by the chairman of the administration, and before the superior administrative court by a commissioner appointed by the state ministry.<sup>79</sup> Against final decisions having the force of law, a retrial may be demanded under the same conditions as in the civil law regarding the complaint for nullification or the complaint for restitution. The superior administrative court is exclusively competent for such decisions. If the superior administrative court considers the complaint justifiable, it may annul the protested decision, or remand the affair to the appropriate instance and order a retrial or a broadening of the procedure.<sup>80</sup>

The foregoing analysis of the legal remedies in administrative judicial procedure shows that there is no one system common to all the states. In a few states the one and only administrative court acts as the first and last instance. In all the states which have two or more administrative instances, the right of appeal lies to the superior administrative instance. The other legal remedies, of which Prussia has the greatest number, are not general. A number of states, including Prussia, Mecklenburg-Schwerin, Lippe, and

<sup>78</sup> *Lex cit.*, Section 35.

<sup>79</sup> *Lex cit.*, Sections 49-51.

<sup>80</sup> *Lex cit.*, Section 67.

Brunswick, permit a retrial of the case under certain circumstances. In several states not only the parties concerned may appeal, but the administration may also appeal on grounds of public interest. In a few states, under certain circumstances the trial before the superior instance takes place *de novo*.

*Conflicts of Jurisdiction.* Conflicts regarding jurisdiction occur primarily between the administrative courts or the administrative authorities and the ordinary courts, and between the administrative courts and the administrative authorities. The imperial law of January 27, 1877, while establishing the general rule that the regular courts were to be the judges of their own jurisdiction, permitted the individual states to establish by law special authorities capable of deciding conflicts of jurisdiction. The law itself, however, makes many specifications concerning the constitution of these bodies.<sup>81</sup>

The Prussian court of conflicts, which was established by an ordinance of August 1, 1879,<sup>82</sup> consists of eleven members, six of whom must be judges of the superior state court and the others qualified for the higher administrative or judicial service. A conflict occurs when the administrative authorities of state or of province claim that the ordinary courts lack jurisdiction in respect to a given case pending before them. This causes a suspension of the court proceedings. The parties must be notified of the conflict, and may then have their counsel prepare opinions which are sent to the court where the case was commenced. All documentary material, including the court's own opinion on the question of jurisdiction, is sent to the higher court, which examines the material, adds its opinion, and passes on the documents to the minister of justice, who submits them to the special court of conflicts.

A negative form of conflict occurs when both the regular courts and the administrative courts deny jurisdiction. Under these conditions the court of conflicts may be asked by a party to the case to decide the question of jurisdiction.<sup>83</sup>

<sup>81</sup> Gerichtsverfassungsgesetz, Section 17, (RGBl. 1877, p. 44). See Chapter XIII.

<sup>82</sup> Gesetzssammlung, 1879, p. 573; see also law of May 22, 1902, GS., p. 145.

<sup>83</sup> On the former "raising of the conflict" in respect to suits against officers, see the Prussian laws of 1854 (GS. p. 86) and 1877 (RGBl. p. 77); also James, H., Principles of Prussian administration, p. 189. The provisions of these laws are no longer in effect. See GS. 1921, p. 65, and RGBl. 1923, p. 292.

In Baden a special court of conflicts decides conflicts of jurisdiction between the civil courts and the administrative courts or the administrative authorities.<sup>84</sup> The same thing is true in Württemberg.<sup>85</sup>

When the conflict of jurisdiction does not involve the ordinary courts, but lies between the administrative authorities and the administrative courts, the decision is usually made by the highest administrative court; <sup>86</sup> occasionally by some special tribunal such as a court of competence.<sup>87</sup>

**The Execution of Decisions.** In many instances the decisions of administrative courts need no special execution, as when they uphold a contested act of an administrative authority. In these cases the administration will execute under its own power.<sup>88</sup> When the administrative courts sustain the objection, or order some change in the act, the administrative authorities themselves will act in accordance with the judgment. In the rare instances where special execution is needed, the forms and the agents provided for the ordinary courts are employed.

**Control Over the Members of the Courts.** In the states where the lower administrative courts are identical with the regular administrative authorities, no special lines of control are needed over the members of these courts, as misconduct in office can be punished by the higher authorities through the regular disciplinary channels. The case is different, however, when the courts are independent of the administration, as are most of the higher administrative courts, in some degree. Here the laws recognize that some sort of disciplinary control is needed.

<sup>84</sup> Gesetz die Ent. von Kompetenzkonflikten betr., of January 30, 1879; Ges.- und Ver.-Blatt, p. 191.

<sup>85</sup> Regierungsblatt, 1879, p. 272 ff.

<sup>86</sup> Prussia, LVG., Section 113; Saxony, Verwaltungsrechtspflegegesetz, Section 90; Bavaria, Verwaltungsgerichtsgesetz, Article 50; Mecklenburg-Schwerin, Gesetz über die Verwaltungsgerichtsbarkeit, Section 81; Lippe, Gesetz die Verwaltungsgerichte und das Verwaltungsstreitverfahren betreffend, Section 57.

<sup>87</sup> Württemberg, Gesetz betr. die Entscheidung von Kompetenzkonflikten, of August 25, 1879; Regierungsblatt, p. 272.

<sup>88</sup> See Chapter XIX.

The law governing the Prussian superior administrative court provides that a plenary session of the court itself may declare a member found guilty of certain misconduct to have forfeited his office and his salary.<sup>89</sup>

Section 5 of the Bavarian law on the administrative court of justice<sup>90</sup> provides that the official supervision over the administrative court of justice and its members belongs to the state ministry of the interior in the same manner as supervision over the state court and its members belongs to the state ministry of justice. The state attorney in the administrative court of justice stands under the supervision of the ministry of the interior.

Section 4 of the Württemberg law regarding administrative adjudication<sup>91</sup> provides that the administrative court of justice is supervised officially by the state ministry. Through orders of the state ministry, with the previous consent of the administrative court of justice, provisions may be established concerning the business procedure in this court.

In Baden the president and members of the administrative court of justice stand in practically the same position as judges.<sup>92</sup> Disciplinary proceedings can be brought against an administrative judge when he has violated his official duty, or when through his conduct in or out of office, he acts in a manner unworthy of the esteem and confidence which his profession demands.

The following punishments are provided: (1) Reproof; (2) fines to 200 marks; (3) withdrawal of the rights of advancement in salary for a certain time; (4) transfer to the waiting list, with or without a recommendation for the lessening of rank or salary or both, in case of reappointment in any branch of the state service; and (5) removal from the state service.<sup>93</sup>

Reproof and fines may be ordered by the supervisory authorities. Against these orders a complaint lies to the higher supervisory

<sup>89</sup> Gesetz betreffend die Verfassung der Verwaltungsgerichte und das Verwaltungsgerichtsverfahren of July 3, 1875, and August 2, 1880, Sections 20, 21 (Gesetz Sammlung, 1880, p. 328).

<sup>90</sup> Gesetz- und Verordnungsblatt, 1878, p. 371.

<sup>91</sup> Regierungs-Blatt, 1876, p. 487.

<sup>92</sup> Gesetz, den Verwaltungsgerichtshof und das Verwaltungsgerichtliche Verfahren betreffend, Sections 4 and 5, of February 24, 1880; G., die Rechtsverhältnisse der Richter betreffend, of 1879, Gesetz- und Verordnungs-Blatt, p. 173 ff.

<sup>93</sup> Gesetz, die Rechtsverhältnisse der Richter betreffend (Sections 10, 11).

authority.<sup>94</sup> The disciplinary penalties are imposed by the disciplinary court, after due investigation. The disciplinary court for the members of the administrative court of justice consists of a president, the four members oldest in service of the disciplinary court established for the discipline of judges, and the president and the chairman (or the councillor oldest in service) of the administrative court of justice.<sup>95</sup>

In Saxony supervision over the members of the superior administrative court is exercised by the president and the senate presidents, in accordance with the laws governing the service relationships of judges.<sup>96</sup> The full session of the superior administrative court has to decide in disciplinary cases.<sup>97</sup>

In Hesse the president and the members of the administrative court of justice may only be removed from office or placed in retirement under the same circumstances as judges. The administrative court of justice itself decides on questions of discipline.<sup>98</sup>

The Mecklenburg-Schwerin law provides that the chairman in the district or city administrative court is in his own right as an administrative judge independent and subordinate only to the law. He is subject to practically the same service regulations as a judge, except for a few special provisions, as for example, that his official superior is the minister of the interior instead of the minister of justice.<sup>99</sup> The president and the councillors in the main division of the state administrative court have the rights and duties of judges. The provisions regarding the discipline of judges apply to them, with the same exceptions that hold for the chairman in the district or city administrative court.<sup>1</sup>

Brunswick provides that the supervision over the members of the administrative court of justice and their assistants and sub-

<sup>94</sup> *Ibid.*, Section 12.

<sup>95</sup> Gesetz den Verwaltungsgerichtshof und das Verwaltungsgerichtliche Verfahren betreffend, Gesetz- und Ver.-Blatt, Baden, 1880, p. 29, Section 5.

<sup>96</sup> Gesetz über die Verwaltungsgerichtspflege of July 19, 1900, Section 6.

<sup>97</sup> *Ibid.*, Section 8.

<sup>98</sup> Gesetz die Verwaltungsrechtspflege betreffend (Gesetzsammlung, 1911, p. 265), Article 7.

<sup>99</sup> Gesetz über die Verwaltungsgerichtsbarkeit (Regierungs Blatt, 1922, p. 211), Section 3.

<sup>1</sup> *Ibid.*, Section 9.

ordinate officers is to be exercised by the minister of the interior. Beyond this the provisions governing judges apply.<sup>2</sup>

In Anhalt the members of the administrative court are subject to the provisions of the law respecting the civil service, as well as to several provisions of other laws, concerning the supervision of judges, disciplinary punishments and the disciplinary procedure against judges, and the like.<sup>3</sup>

In Lippe the members and substitute members of the administrative courts are subject to the disciplinary provisions valid for judges; and to the provisions (so far as they are applicable) concerning supervision and temporary removal found in the law of May 11, 1859, respecting the state service. The right of supervision belongs to the state ministry in respect to the entire administrative court, and the chairman of the superior administrative court in respect to this court and the county administrative courts. The right of supervision includes also the right to revise the order of business. The disciplinary punishments designated in the state service law are applied only against members of the administrative courts who also administer some other state office.<sup>4</sup>

The law of Hamburg regarding administrative jurisdiction provides that the administrative courts stand under the senate commission for the administration of justice, and must upon its request render opinions on general questions of constitutional or administrative law, especially concerning drafts of laws on these subjects. The immediate supervision of the administrative court belongs to the president of the state court; that of the superior administrative court, to the president of the Hanseatic superior state court.<sup>5</sup>

**Summary and Conclusions.** There is no unified administrative court system in Germany to-day, corresponding to the ordinary judicial court system. Each state has its own administrative courts which have been created from time to time to meet particular needs.

<sup>2</sup> Gesetz, betreffend die Verwaltungsrechtspflege (Gesetz- und Verordnungs-Sammlung, 1895, p. 79 ff.), Section 3.

<sup>3</sup> Gesetz, die Verwaltungsgerichte und das Verwaltungsstreitverfahren betreffend (Gesetzsammlung, 1888, p. 41 ff.), Section 20.

<sup>4</sup> Gesetz, die Verwaltungsgerichte und das Verwaltungsstreitverfahren betreffend, Gesetzsammlung, 1898, p. 281, Sections 12-14: Staatsdienstgesetz, May 11, 1859 (LV. 12, p. 351).

<sup>5</sup> Gesetz- und Verordnungsblatt, 1921, p. 595.



Although the Constitution of 1919 requires the establishment of a national administrative court, this requirement has not as yet been met, in part because of <sup>6</sup> a certain opposition to change, and the demands of economy, but principally because of the very difficult problems that must be solved in establishing such a court. These problems include many aspects of the relationship between the Reich and the states,<sup>7</sup> and such general questions as the following: Should the court be an independent court or a part of the Reichsgericht? What should be its location? What should be the procedure before it? Should it be a reviewing authority, as well as an appellate authority? Should it have the right to issue special writs? How should the court be composed? Should it have lay members? What should be its competence? Should competence be bestowed by a general clause or by enumeration? How should questions of conflict between it and the ordinary courts be decided?<sup>8</sup>

The state administrative courts are in part the result of a long historical development, in part the result of recent changes. Each state, with the exception of Waldeck, has its own system. These administrative court systems vary greatly in many respects, but more particularly in respect to organization and jurisdiction. Divergences are due to historical causes and differences in political theory; also to the size of the states, the number of administrative divisions within them, and the extent of administrative business.

Because of these differences, it is difficult to give an answer to any question concerning the administrative courts, which will be valid for all the states. Majority practice and general trends, however, can be indicated.

Over the greater part of Germany, in both population and territory, the lower administrative courts are united with the active administration. This is not true in Württemberg, or in the states

<sup>6</sup> Lassar, p. 186.

<sup>7</sup> It should be remembered that the states carry out national laws for the most part through their own agents; and that at the present time these agents are largely under the control of the state administrative courts. If a national administrative court of general jurisdiction were established, which should control all of the state administrative courts, difficulties might arise in this connection.

<sup>8</sup> For a very able discussion of these questions, see Paul Wigger, *Das Reichsverwaltungsgericht*, Dissertation, Köln, 1926.

that have established or remodeled their administrative courts since the war ; namely, the two Mecklenburgs, Thuringia, and the Hanseatic cities.

In general the highest state administrative courts are quite different from the lower instances, both as to the qualifications and tenure of their members, and in the fact that they are not a part of the active administration. The members of these courts, who are generally appointed by the ministry, must as a rule possess the qualifications of judges or of persons in the higher administrative services, and usually have life tenure and the same rights and position as ordinary judges. In a great majority of cases the highest administrative court is absolutely independent from both the active administration and the legislature, and separated organically and functionally from the ordinary court system. Its status as an administrative court depends in part on its jurisdiction and its relation to the lower administrative courts, and in part upon the fact that a certain number of its members are administrators by profession.

The general rule still prevails that jurisdiction is given to the administrative courts by specific enumeration ; but in a few states, including Württemberg, Saxony, and the Hanseatic city-states, to all intents it is bestowed by a general clause. Even when it is bestowed by enumeration it is not narrowly restricted, for in most states this clause is so worded as to include a very wide field, covering practically the entire domain of public administration.

The jurisdiction of the highest administrative courts is commonly both original and appellate ; as a rule it does not include questions of discretion, but only questions of law and fact ; generally, although not universally, the jurisdiction includes only questions of subjective rights and is not concerned (as is that of the Council of State in France) with the maintenance of the objective legal order, except as this results from the guaranteeing of subjective rights. In particular, the administrative courts seldom possess jurisdiction where the case is based merely upon an interest which appears to be endangered in a general way, or upon a general public interest. Usually the interest must be a personal one, specifically affected or endangered by the administrative act contested. In Prussia and in some other states, however, there are a few particular exceptions to this rule. In several states a complaint can only be entered in the administrative courts after the admin-

istrative authorities have passed finally upon it. In most cases the higher administrative courts are debarred from making informal administrative decisions as to a contested act of the public authorities, and are held strictly to administrative judicial procedure in respect to formal suits or "conflicts."

The administrative courts usually have the power to administer oaths, to summon witnesses and experts, to punish for disobedience, and to maintain order in the court room.

Suits before the administrative courts may be brought in most jurisdictions by a private individual, a public officer or a public corporation, especially a communal corporation. The suits brought by an individual may in a few cases be based on a general right or interest in the enforcement or non-enforcement of a law or ordinance, but are usually based on a claim that a personal or subjective right of the individual has been violated by an act of the administration. Officers may bring suits to protect their rights, such as rights to office, rights of salary, compensation for expenses, etc. Public corporations may bring suits as to their boundaries or powers, suits attacking administrative orders which lay upon them burdens and duties, or suits to secure rights belonging to the corporation. Representatives of the parties are usually allowed to appear before the administrative courts. As a rule public authorities also send their representatives before the administrative courts whenever they believe that a case involves a public interest.

There is probably greater uniformity among the German states in respect to procedure than in respect to any other question affecting the administrative courts. To a very great extent it is based on the code of civil procedure. Practically all the states guarantee the principle of publicity and (with certain exceptions) that of oral debate. The proceedings before the higher administrative courts are a combination of trial and investigation. The judge does not open an investigation of his own volition, but acts only upon the motion of a party, and is sometimes limited in the higher courts to the factual findings of the lower courts and to the representations of the parties. Frequently the representative of the public interest may bring in independent proposals. In a majority of states the judge investigates the facts of the case independently before a formal trial is held.

The case is opened with the entering of a complaint, regarding which the court can generally issue a decision if the case seems clear. As a rule each party has the right to object to this decision and to demand a trial. It is not obligatory for the parties to attend during the trial, but unless they do so the case is decided in accordance with the facts and the evidence available. In certain states the parties may modify their original motions or declarations, if in the opinion of the court the opposing party is not injured thereby or the proceedings unduly delayed. The parties have the right to introduce evidence and present witnesses, and it is the duty of the chairman of the court to secure if possible all relevant facts.

The court decides on the basis of all facts brought out in the hearing or from independent investigation. At the conclusion of the trial a formal decision is rendered, which states the grounds on which it is based.

The number and the nature of the remedies against the decisions of administrative courts varies greatly in the different states according to the number of instances. Where there is only one instance, as in Württemberg, its decisions are final and conclusive. Where there are several instances, several remedies may be available. In practically all cases where there is more than one instance, the right of appeal lies to a superior administrative court. The other generally available remedies against the judgments of administrative courts are the review and the complaint. In certain states, after the decision is rendered the case may be remanded to its previous status, or a retrial may be granted. All these remedies are available in Prussia, but most of the other states do not allow so many. In several states not only the parties concerned may seek legal remedies, but the administration may do the same on the ground of public interest, even when it is not formally a party.

The individual states establish their own authorities for settling questions of jurisdiction between the ordinary courts and the administrative courts under certain broad principles established by national law. In conflicts of competence between the administrative authorities and the administrative courts, the decision is usually made by either the highest administrative court or a special court of conflict.

The execution of administrative court decisions is accomplished by the same agencies and methods as ordinary administrative execution.

The laws of the various states regarding control over the administrative courts are so different that it is almost impossible to make a summary statement regarding them. As a rule the members of the higher courts occupy a position of independence similar to that of judges in the ordinary courts, and are subordinate only to the law; yet in several instances they are under the administrative direction of the ministry or of a particular minister. In a number of states the disciplinary procedure for members of the administrative courts is the same as that for judges.

Although there are still wide differences of opinion regarding the proper organization and functions of the administrative courts of Germany, and great variations in the positive laws governing these courts, current writings and other indications justify the belief that a more unified opinion regarding them is gradually developing, which will doubtless have practical results. There is a fairly persistent demand for two main reforms, namely, the establishment of a national administrative court of general jurisdiction, and changes in the state administrative court systems which will make for greater uniformity.

The demand for a national administrative court of general jurisdiction has been developing for at least twenty years. The question has repeatedly been brought before the Reichstag in one form or another, even prior to the World War and the adoption of the new Constitution.<sup>9</sup> The Convention of German Jurists advocated such a measure in 1910, when they declared, "There exists a need for the creation of a legally established high judicial instance for administrative affairs, in order to secure unity in the application of the national administrative laws."<sup>10</sup> Article 107 of the Constitution of 1919 expresses this commonly recognized need. Since the adoption of the Constitution, the Reichstag has debated three different bills for the establishment of a national administrative court.<sup>11</sup>

<sup>9</sup> Wörterbuch, Stengel-Fleischmann, 1914, Vol. III, p. 752.

<sup>10</sup> Quoted, *ibid.*

<sup>11</sup> In 1919, 1921, and 1926. See Bl. Adm. Praxis, Vol. 70, p. 65; Bredt, Der Vorentwurf eines Gesetz über das Reichsverwaltungsgericht, Pr. Ver. Bl. Bd. 41, p. 201; Damme, DJZ. 1920, p. 182 ff.; Friedrichs, Verwaltungsarchiv, Bd. 28 (1920-21), p. 202 ff.; Drews, DJZ. 1921, p. 86 ff.; Löwenthal, DJZ. 1926, p. 475, Schoen, DJZ. 1921, p. 789.

So important has the question of administrative reform become, that it has been designated as "the central problem in state development"<sup>12</sup> in Germany. The reasons for the importance of this reform are not hard to find. With the lessening of the territory of competence of the states under the present Constitution, there has been a development of that of the Reich, resulting in a great increase of problems involving national administrative jurisdiction. The multiplication of special administrative courts does not solve the problem effectively, as it fails to meet all needs, involves considerable expense, and does not make for a unified application of administrative law. It appears to be the general opinion that a national administrative court will soon be established and that the state courts will be brought into organic relation with it. Meanwhile, the states hesitate to make extensive changes in their administrative systems and administrative court systems before the Reich has acted. Because of the influence which a national administrative court must have upon the functioning and thus indirectly upon the structure of administration, the reform of both state and national administration, as well as of the state administrative court systems, awaits the establishment of this court.

We have already indicated some of the difficulties that exist in the settlement of this problem. Large questions of constitutional law involving the whole relationship of the Reich to the states must be solved, and theories as to the organization of the administrative courts, their jurisdiction, the method of granting jurisdiction, their procedure, and their relationships to the legislative authorities and to the ordinary courts, must be agreed upon before a satisfactory solution can be reached.

Since a great part of the administration of the national laws is carried out by the states, it is necessary that the highest administrative court of the Reich should exercise a certain degree of control over state administration. This must necessarily include both control over the administrative authorities by whom the national laws are executed, and also over certain acts of the state legislature, since the latter issue executory laws for the carrying out of the national laws. The establishment of a national administrative court, therefore, must have regard to the relationship of this court to the

<sup>12</sup> See article by Dr. Hackenburg in *Deutsche-Juristen-Zeitung*, 1926, p. 1618.

state organs of administration, to the state courts, and to the state legislatures. There is little doubt that the national legislature in establishing the national administrative courts has a right to reorganize the jurisdiction of the state administrative courts as it sees fit, in so far as matters falling within the powers of the Reich are concerned.<sup>13</sup>

Several difficult problems must be solved in this connection. Although it might be theoretically possible for the Reich to reorganize the whole administrative court systems of the states in order to form one unified system comparable to that of the ordinary courts, this is hardly politically possible at present, nor does it appear necessary. It is doubtless necessary, however, that there shall be in every state at least one administrative court instance competent for those affairs assigned to the national administrative courts.<sup>14</sup> In this case, as Dr. Drews suggests, it would be essential that these tribunals be real courts; or, in other words, that they be composed at least in part of duly qualified judges; and that there be the "same guarantee of objectivity and integrity as in the ordinary courts."<sup>15</sup> This would be particularly necessary if the Reichsverwaltungsgericht were solely or chiefly a reviewing instance, since in that case the state court would have exclusive jurisdiction in establishing questions of fact, which would be certified to the national administrative courts in all cases involving the administration of national laws by the states. To accomplish this purpose, it might be necessary for the Reichstag to establish a certain framework for the state administrative courts.

This suggests the question, what should be the material jurisdiction of the national administrative court? Should it include all cases arising under the national laws and ordinances, or should it be limited to matters specifically enumerated? Expert opinion on this point is not uniform. On the one hand, it is urged that in order to safeguard administrative justice to the utmost possible extent, the court should have general and complete jurisdiction over all fields to which the legislative power of the Reich extends. On the

<sup>13</sup> See article by Dr. Bill Drews, *Deutsche Juristen-Zeitung*, 1921, p. 86.

<sup>14</sup> See Article by Dr. Löwenthal, *Der Gesetzentwurf über das Verwaltungsgericht*, DJZ. 1926, p. 475. The text of the 1926 draft *in re* the Reichsverwaltungsgericht provides for this.

<sup>15</sup> DJZ. 1921, p. 86, article on Reichsverwaltungsgericht.

other hand, a more limited jurisdiction is favored on grounds of economy, the strong opposition of the states to a very complete national control, the wish to gain experience before proceeding further,<sup>16</sup> and, finally, the belief that the administration of many national laws involves matters of a local nature which should not be brought before a national administrative court.<sup>17</sup> There is a very strong body of opinion, however, including that of the association of teachers of public law,<sup>18</sup> to the effect that the grant of jurisdiction should be given the national administrative court by a general clause which would include all territories of administration covered by national laws rather than by enumeration of a few particular subjects, as provided in the draft bill submitted to the Reichstag in 1926.

The next important question of jurisdiction is, whether the national administrative court should have jurisdiction only for the purpose of protecting the individual against illegal ordinances and orders of administrative authorities, or whether its jurisdiction should extend, as does that of the Council of State in France, to control over the proper administration of the laws, or protection of the objective legal order. Article 107 of the Constitution expressly provides only for the former function, and this must unquestionably be the primary purpose of the national administrative court. The draft now under consideration by the Reichstag would confine the functions of the court to the decision of cases in which individual citizens believe themselves to be injured in rights belonging to them by national law, through the ordinances and orders of administrative authorities. It is the feeling of many German writers, perhaps of the majority, that this is advisable, and that the objective legal order will be sufficiently protected through the protection of the subjective rights of individuals. If the bill is passed in its present form, general interest in opposing an ordinance, or mere interest as a citizen of the state in the enforcement of a law strictly according to its provisions, would not give occasion for bringing a case before the national administrative court.

Should the national administrative court have jurisdiction over questions of fact or only over questions of law? Here, again, there

<sup>16</sup> Dr. Löwenthal, *Der Gesetzentwurf über das Reichsverwaltungsgericht*, in *DJZ.* 1926, p. 475.

<sup>17</sup> Jesse, in *Deutsche Juristen-Zeitung*, 1926, p. 1.

<sup>18</sup> Report of Convention at Leipzig in March, 1925.



is a division of opinion; but the majority of experts seem to be in favor of limiting the jurisdiction of the court to questions of law, by having all facts certified by the superior state instances. This would relieve the court of a great deal of work, and would also make it possible for the court to act almost entirely as an authority charged with the uniform application of the national law. That there is great need for the exercise of such a function cannot be doubted, since at present the state superior courts may violently disagree upon the interpretation and the proper administration of national law. To the problem whether the national administrative court should have jurisdiction over matters in which the administrative authorities possess a certain amount of discretion, the consensus of opinion gives a negative answer. There is quite general agreement that the court should not be given any such power, as this might tend to involve it in questions political in nature.

Procedure before the national administrative court might be settled by the court itself, or a national code of procedure might possibly be passed, to govern all administrative courts.

A difficult point is the adjustment of the relationship between the Reichsverwaltungsgericht and other administrative courts, both state and national. How far can the functions now carried on by the various national administrative courts be transferred to the national administrative court? Will it be possible to simplify the complicated administrative court systems of the states by transferring certain functions of the state courts to the national court?

A former Vice President of the Prussian Superior Administrative Court writes on this matter as follows: "If the competence of the national administrative court is closely restricted, and if legal control over the administration in the territory of national law continues to be substantially given over to the highest administrative courts of the states, the new court will merely come in beside the others. . . . That is not compatible with the fundamental principle of necessary economy. The creation of a national administrative court is only justifiable, if thereby the states can bring about a retrenchment in their administrative court organizations."<sup>19</sup>

Another problem that must be solved is, whether there should be an official representative of the public interest in connection with

<sup>19</sup> Jesse, *op. cit.*, DJZ. 1926, p. 1 ff. (4).

the national administrative court, and if so, what kind of representative should be established. There seem to be two possibilities open, namely, either the creation of a national attorney general to represent the interests of the government, or the special representation of particular interests by commissioners from the various departments. Those who favor the Prussian practice of having the administrative authority, whose acts are contested (or its representative) appear as a party, urge that because of specific knowledge the interests of the government are looked after more adequately in this way, than if the Bavarian practice of having a state's attorney represent the government in all suits should be adopted.

Certain questions of organization must be answered, as whether the court shall be a division of the Reichsgericht or entirely separate, whether its judges shall be chosen partly from the administration or entirely from the bench, what shall be the tenure and status of judges, and so on.

Finally, there is the troublesome question of the location of the court. From the viewpoint of a close relation between the two great agencies of control over the administration of national laws, the national administrative court and the central departments, and of joint use with other important courts of such facilities as buildings and technical libraries, there is much to be said in favor of locating it in Berlin. Political considerations may, however, demand that it be established in some other place.<sup>20</sup>

As has been pointed out, the reform of the administrative systems of the states, and the reform of their administrative court systems as well, are intimately related to the problem of the establishment of a national administrative court. The important questions in respect to reform in the state administrative courts are of the same general nature as those which have been discussed in respect to the establishment of a national administrative court—questions of organization, jurisdiction, parties before the courts, procedure, legal remedies, and the like.

<sup>20</sup> See Bühler, *Der Sitz des künftigen Rechtsverwaltungsgericht*, Archiv d. öff. Rechts, Bd. 43, p. 101 ff.; Drews, DJZ. 1921, p. 86; Mirow, *Nochmals das Reichsverwaltungsgericht*, DJZ. February 1, 1927, p. 198; Löwenthal, DJZ. April 1, 1926, p. 475; Jesse, *op. cit.*

Although theory in respect to these questions is far from being uniform, and practice is still less so, there are several indications<sup>21</sup> that a more unified theory regarding the superior state administrative courts is developing. The general trend of opinion appears to be in favor of making the following changes which would affect these courts:

1. Organize a national administrative court, and in so far as is necessary, reorganize the higher state administrative courts in such a way that they can act in harmony with it.
2. Organize the higher state courts as judicial tribunals having certain members with administrative training, but having no direct connection with the active administration.<sup>22</sup>
3. Have the courts composed exclusively of judicial officers and experienced administrators qualified for the higher administrative services, with permanent tenure and the same rights as judges.
4. Grant jurisdiction to the administrative courts by a general clause rather than by the principle of enumeration.
5. Take away from the administrative courts the right to pass upon questions of discretion, leaving this entirely with the administrative officers.
6. Confine the administrative courts to questions of subjective rights and duties, instead of also giving them jurisdiction where a general interest or a public interest is at stake.
7. Provide that the higher administrative courts should only take jurisdiction in conflict procedure, that is, in formal suits. They should have no jurisdiction unless a justiciable question of law were involved.

<sup>21</sup> From writings of theorists, from the conclusions of teachers of law, from the trend of the administrative courts created since the war and from drafts of the law for the national administrative court. See Dr. Drews, the President of the Prussian Superior Administrative Court, in the *Zeitschrift für gesamte Staatswissenschaft*, Bd. 78 (1924), p. 586 ff., on the Development of the Prussian Administrative Court System. This article and the dissertation of Elbe, *Die Verwaltungsgerichtsbarkheit nach den Gesetzen der deutschen Länder*, summarize the more common tendencies.

<sup>22</sup> Dr. Bill Drews says: "The union of administration and administrative courts in one authority appears to be a mistake, not only because of the inner incompatibility of the status of a political officer and of a judge, but also because administration and justice are dissimilar throughout" (In *Zeitschrift für die gesamte Staatswissenschaft*, Vol. 78 (1924), p. 601). Not all authors, however, take this view. As we have seen, Anschütz considers it an essential feature of an administrative court that it is to some extent an administrative authority (Note 1 to Article 107 of the national Constitution).

8. Make the procedure before the administrative courts public, provide for a verbal hearing, allow witnesses, etc.
9. Establish a number of remedies against the decisions of the lower administrative courts.
10. Provide adequate methods for the settlement of conflicts between different administrative courts or administrative authorities, or between the regular courts and the administrative courts.
11. Allocate definitely the right to pass on questions of constitutionality, possibly by requiring them all to be certified to the same supreme national court, whether they arise in the ordinary courts or in administrative courts.

If such reforms were introduced in all the higher state administrative courts and every complaint against the infringement of a personal legal (not discretionary) right by the lower administrative authorities might sooner or later reach these courts, there would seem to be little need for a drastic reorganization of the lower state administrative courts in the interests of a uniform procedure.

The animated discussion which is heard in Germany to-day respecting administrative courts involves no question as to the value of these courts as an institution. The requirement of the national Constitution that such courts shall exist in the Reich and in the states is an expression of the general conviction that administrative courts are indispensable. This conviction is based on practical experience of their convenience as well as on theoretical grounds.

In the matter of convenience, it is found that many affairs decided by the administrative courts are of such a nature that they can be handled there far more justly, efficiently, and rapidly than they could be handled before the ordinary courts. This is especially true in respect to informal process in the lower administrative courts. Even in the higher ones, the advantages of a process more flexible than that to which the ordinary courts are bound, which includes inquiry by the bench into all phases of the question at issue rather than limitation to such phases as are presented by the parties, and representation of the interests of the state even when it is not a litigant, are particularly great in view of the special nature of many administrative suits. The court must do justice to the individual in protecting him against unwarranted or arbitrary action on the part of the administration, while at the same time it must con-

sider the public interests involved, such as the integrity of the administrative organization and the efficient execution of the law. Questions affecting the mutual relations of various governmental units must be considered from a broader viewpoint than the technical legal one. The process must also be simple, inexpensive, and expeditious, not only because of the benefits thus conferred upon the individual, but in order to protect the administration and to prevent its activities from being unduly impeded.<sup>23</sup>

These things can best be accomplished by tribunals composed in part at least of administrators or persons who have had experience in administration, and distinct from the ordinary courts. It is felt that the advantages obtained by this arrangement outweigh the dogmatic view that all rights without exception must be decided and established solely by regular judges. Even special chambers of the ordinary courts to handle administrative cases would not be so efficacious, because of the limitations of judicial procedure and because the judge's point of view needs to be supplemented by the administrator's, as it is in the separate administrative courts.

A very important difference between the ordinary courts and the administrative courts lies in what may be called the preventive function of the latter. Whereas no suit may come before a regular court except on an allegation that illegal acts have been committed, complaints before the administrative courts may lie against orders and ordinances before any overt act has been accomplished. "Test cases" may thus be brought before these courts without the deliberate breaking of a law in order to attack its legality; harmful acts on the part of the authorities may be prevented, and irreparable damage may be guarded against, without the use of the injunction at the discretion of the regular courts, which has led to so much dissatisfaction in the United States.<sup>24</sup>

Any fear that these courts might fail to do justice to the individual because of a bias in favor of the administration is dispelled by the facts that regular judges sit together with administrators on the benches of the higher courts; that the administrators in these courts

<sup>23</sup> See Seydel in Stengel's *Wörterbuch des Verwaltungsrechts*, II, p. 737; also Loening, *Verwaltungsrecht*, p. 824.

<sup>24</sup> On the use of the injunction and other writs by the courts in the United States, see Dickinson, John, *Administrative Justice and the Supremacy of Law*, pp. 40-49, *et passim*.

are trained and qualified almost identically with judges except for their practical experience; that their position is very similar to that of judges, so that they are as nearly as possible beyond the reach of political motives; that process in the administrative courts, though flexible, is carefully regulated; and that the remedies available in most instances make it possible to transfer a case from an atmosphere of prejudice, if such is thought to exist, to a tribunal far removed from the authorities against whose act the complaint is made. The Anglo-American fear of arbitrary and tyrannical action by the government,<sup>25</sup> with its accompanying tendency to look to the regular courts for protection against every unwarranted act of every governmental agency,<sup>26</sup> does not prevail in Germany. The Constitution of the Reich, when endeavoring to protect the individual against illegal acts of administrative authorities, gave this function, not to the ordinary courts, but to administrative courts. It should be noted, however, that if any individual does feel that only the civil courts can protect his rights, it is possible for him to appeal to these courts under certain conditions, on the ground of Paragraph 839 of the Civil Code, by bringing a damage suit against the officer who he claims has injured him. The administration may also in some instances bring damage suits against the individual before the civil courts, and in some cases may bring criminal prosecutions. The door to the regular courts is thus not entirely closed.

The most important reason, from the viewpoint of political philosophy, why special administrative courts rather than special chambers or branches of the ordinary courts should handle administrative suits, lies in the doctrine that a true separation of powers should leave the administration as independent as possible from judicial control. The administration should exercise its powers with a minimum of interference from the other departments. The hierarchy of control within the administration itself should regulate the acts of administrative authorities. Parliamentary control should be exercised under ordinary circumstances not through petty interferences, but by such long-distance methods as general legislation, expressions of confidence or lack of confidence, and other con-

<sup>25</sup> See Dickinson, *op. cit.*, p. 32 ff.

<sup>26</sup> *Ibid.*, *passim*. See also Mott, Rodney L., Due Process of Law. See Zorn's discussion of the inapplicability of ordinary civil procedure to public law cases, in *Verwaltungsarchiv*, Bd. 2 (1893-1894), p. 131.

trols over the highest administrative authorities. Judicial control should be reduced to a minimum by the assignment of most administrative controversies for decision by an administrative tribunal. Such an arrangement makes for an actual working separation of powers, and for a more practical, rational, and democratic relationship among the departments of government, than the American system, in which the administration is not responsible to the legislature, but both administration and legislature are in fact largely controlled by the courts.

The creation in Germany of a national administrative court, closely connected with the Staatsgerichtshof, and the introduction of the many reforms which will probably accompany its establishment, will do much to unify and clarify administrative law and procedure throughout Germany.

## CHAPTER XV

### EDUCATIONAL ADMINISTRATION

In the German Constitution of 1871 the limited number of affairs which were assigned to national legislation and supervision<sup>1</sup> did not include education. School legislation and administration belonged fundamentally, as in the United States, within the competence of the states. However, under the powers of the Reich in respect to military and naval affairs, certain steps were taken toward classifying higher educational institutions with reference to their facilities for educating persons who might enter the military service.<sup>2</sup>

The Constitution of 1919 changed this situation greatly. Not only was the Reich given the right to establish by law fundamental principles for the school system,<sup>3</sup> but the Constitution itself lays down many fundamental principles governing education, as follows:

The coöperation of the Reich, states, and communes in education;<sup>4</sup>  
State protection of and freedom of education;<sup>5</sup>

The provision of education through public institutions;<sup>6</sup>

The education of teachers is to be regulated uniformly for the Reich, according to the same fundamental principles that apply to higher education in general;<sup>6</sup>

Teachers in public schools have the rights and duties of state officers;<sup>6</sup>

Compulsory universal education. This is to be accomplished by common schools offering at least eight years of work; continuation schools properly integrated with the elementary schools up through the eighteenth year of life; and free instruction and free school supplies in the common schools and continuation schools;<sup>7</sup>

<sup>1</sup> Article 4.

<sup>2</sup> Handwörterbuch der Kommunalwissenschaften, Bd. III, p. 693.

<sup>3</sup> RV. Article 10.

<sup>4</sup> Articles 143, 146.

<sup>5</sup> Article 142.

<sup>6</sup> Article 143; see also Article 109, par. 2, and Article 128, par. 2.

<sup>7</sup> Article 145.



The entire school system is to be built up organically on the basis of the elementary common school. The organization is to be governed by the need of preparing children for many different occupations. For the reception of a child into a particular school, the standard shall be his abilities and aptitudes, not the economic and social position or the religious beliefs of his parents;<sup>8</sup>

Within communes, elementary schools may be established upon the motion of those entitled to education, which teach the religion or world philosophy favored by the students, in so far as this does not impair the organized school system;<sup>9</sup>

The furnishing of public means by Reich, states, and communes, to aid students of small means who are fitted for intermediate and higher schools;<sup>8</sup>

Private schools as substitutes for public schools are governed by state laws and require the approval of the state;<sup>9</sup>

Private preparatory schools are to be abolished;<sup>9</sup>

Morality, citizenship, personal and vocational skill are to be the objects of education;<sup>10</sup>

Popular education, including higher education, is to be fostered by the Reich, states and communes;<sup>10</sup>

The regulation of religious instruction;<sup>11</sup> and

The entire school system stands under the supervision of the states: it can share this function with the communes. The supervision is exercised by high professionally trained officers.<sup>12</sup>

It can readily be seen that these constitutional provisions fall into two main classes:

Program articles. The great majority of these provisions constitute program articles or general principles which the national and state legislatures must follow. They do not in themselves constitute valid law. The Prussian Kammergericht in a decision of March 24, 1923,<sup>13</sup> has said, "The national Constitution itself contains, in Article 142 ff., only a pragmatic declaration in respect to the school system; it constitutes no element of valid law."<sup>14</sup> Existing provisions therefore remain

<sup>8</sup> Article 146.

<sup>9</sup> Article 147. See RGBI. 1920, p. 851, Section 2, par. 2; 1927, I, p. 67.

<sup>10</sup> Article 148.

<sup>11</sup> Article 149.

<sup>12</sup> Article 144.

<sup>13</sup> Band 15, p. 142 ff.

<sup>14</sup> So long and in so far as the Reich makes no use of its legislative rights the states have the right of legislation. This constitutional provision (Art. 12) was quoted by the Kammergericht in respect to the right of the state to legislate in educational matters under the new Constitution. *Op. cit.*

valid until the Reich has acted, in so far as they are not in contradiction to the Constitution; and Provisions which are immediately effective in the sense that any laws contravening them are invalid. Thus, no state may enforce legal provisions denying teachers the rights and duties of state officers, charging fees for elementary education, eliminating the theological faculties in the universities, and so on.<sup>15</sup>

Through Article 10, No. 2, of the national Constitution, the Reich is given power to lay down general principles regarding the school system, including the higher schools and the scientific libraries. How far does this provision enable the Reich to regulate the educational system of the country? May only a general program be established, to be put into effect by state laws, or may the Reich itself pass laws that are immediately valid without further legislation on the part of the state? The Oberverwaltungsgericht has decided that such laws, although fundamental in nature, may be made immediately binding upon the states. Such a law "establishes immediately valid law and thereby sets aside all national and state law conflicting with it, so that the execution and development of its principles can be carried through directly by the administrative organs of the state, since the state legislative principles conflicting with it are invalidated."<sup>16</sup> This decision leaves no doubt that the general principles established by the Reich can be made immediately effective as national law, which must be obeyed by the state educational authorities.

The most important use which the Reich has made of this power is to pass a law regulating the common school system.<sup>17</sup> This law provides that the common school is to be the general basis of the educational system. The first four grades of the common school are to be established as an elementary school to be attended by all children.<sup>18</sup> In individual cases especially gifted children may go into a higher division after three years in the great public common

<sup>15</sup> See the famous decision which declared invalid a provision of the Bavarian school law providing that the marriage of a woman school teacher should involve the loss of her position (Ent. d. Reichsgerichts, Zivilsachen, 102, p. 145 ff. See also *ibid.*, 106, p. 54 ff.; 110, p. 190 ff.

<sup>16</sup> Decision of February 24, 1925.

<sup>17</sup> Gesetz, betr. die Grundschulen und Aufhebung der Vorschulen, Reichsgesetzblatt, 1920, p. 851, as amended by law of February 26, 1927, RGBl. I, p. 67.

<sup>18</sup> Law of 1920, Article 1.

school system, after a hearing of the teachers in the elementary schools and with the consent of the school supervisory authority.<sup>19</sup> The elementary schools are not only to provide basic education, but also to guarantee the necessary training for direct entrance into the intermediate and higher schools.<sup>20</sup> The public and private preparatory schools and preparatory classes which were formerly attended by children who expected to enter a higher school are now abolished, with certain temporary exceptions, and their place is filled by the elementary common schools.<sup>21</sup>

**The Present School System.** As a result of the national constitutional provisions and national laws, one can to-day speak of the unified German school system. This unification is still far from perfect, but it has made considerable progress. The various kinds of schools have been brought into some organic relationship, and there is provision for a transition from the elementary schools to the intermediate schools and higher schools. Although the school systems of the states vary considerably from one another, four principal kinds of schools can be recognized. These are the common schools, the intermediate schools, the higher schools (institutions of higher learning), and the professional schools.

At the age of six every child enters the common elementary school and remains there for four years, unless its exceptional abilities enable it to make more rapid progress. When the child is ten years old or has completed the work of the elementary school, a decision must be made, usually after careful psychological and other tests, as to whether it should continue in the common school system or transfer to a different kind of school providing for more advantages in the languages and other subjects considered necessary for higher education. In making this decision the capacity and inclination of the child are to be considered, but not the economic or social relationships of its parents. In case the child decides to remain in the common schools, he takes four more years of work there, and then goes into continuation schools, where he

<sup>19</sup> Gesetz, betreffend den Lehrgang der Grundschule, of April 18, 1925, Reichsgesetzblatt, 1925, I, p. 49.

<sup>20</sup> Law of April 28, 1920, Section 1, par. 2.

<sup>21</sup> *Ibid.*, Section 2; also RGBl. 1927, I, p. 67.

may learn the trades and applied arts, or into agricultural, commercial, or business schools.<sup>22</sup>

The system of intermediate schools has not as yet become fully established. Intermediate schools are intended to meet the needs of children who do not expect to pursue academic careers, but desire a somewhat broader education than is supplied by the common schools, including modern languages. The intermediate schools, as a rule, offer work covering what would be called in the United States, the grammar grades and a part of the secondary curriculum. The primary grades were formerly included, but under the present law these grades must either be eliminated or identified with the common school system. Intermediate schools are established by communes, and fees are charged, although there are numerous free scholarships. There is sufficient correlation between the work of the common schools and that of the intermediate schools, to permit (at least before the upper grades are reached) an occasional transfer to the latter of a particularly brilliant child. Intermediate schools are preëminently a Prussian institution, since they were not established in Saxony, Württemberg, Lippe and Bremen until 1922; while in Bavaria and Baden they have not yet been developed to any great extent.<sup>23</sup> The common schools and the intermediate schools are designated as lower schools.

Those who have completed a course in an intermediate school are considered to have the qualifications for various branches of state service, or for further education in certain lines. In Prussia, for example, they may become candidates for positions of middle rank in the post and telegraph service, may go into the lower classes of the higher engineering schools or enter various other special or technical schools, may go into the bureau service of most cities, and so on.<sup>24</sup>

*Higher Schools for Boys.* Although boys and girls receive very similar training in the common schools and in the intermediate

<sup>22</sup> For a brief description of the present day school system in Germany, see *Monatschrift für das gesamte Schulwesen*, October, 1925. This article contains some good charts showing at a glance the general educational system. For references to special laws, ordinances, etc., de Grais, *Handbuch d. Verf. u. Verw.*, pp. 503-32.

<sup>23</sup> Dieckmann, *Verwaltungsrecht* (2d and 3d ed.), p. 714; *Handwörterbuch d. Kommunalwissenschaften*, Bd. III, pp. 717 ff.

<sup>24</sup> *Handwörterbuch d. K. Wissenschaften*, Bd. III, p. 722.

schools, their work is not identical, nor does coeducation prevail. Experiments have been made with coeducation in Württemberg and elsewhere; but as a rule, except for the youngest children, girls and boys are educated in separate classes or even in separate schools. The system of higher education for boys displays numerous differences from the system for girls. The former will be described first.

The name of "Higher Educational Institutions" is, in Prussia, bestowed on those schools that form the connecting link between the elementary schools on the one hand, and the universities and other higher colleges on the other. . . . There are three kinds of complete higher educational institutions, viz., Gymnasia, Realgymnasia, and Higher Realschulen, and to these correspond three kinds of incomplete institutions, viz., Progymnasia, Realprogymnasia, and Realschulen. The complete institutions have nine classes. . . . The incomplete institutions are without the three upper classes.<sup>25</sup>

The Gymnasia emphasize Latin and Greek, and usually offer other languages as well; the Realgymnasia teach Latin, French, and English; the Oberrealschulen display a certain variety of curricula, usually giving more time to modern languages, natural science, and mathematics than these subjects receive in the other higher schools.<sup>26</sup>

In Prussia and in some other states, the old requirement that entrance to a university must presuppose graduation from a gymnasium has given way to acceptance of graduation from the other higher schools, at least for certain university courses. Theological students must still come from a gymnasium, as must, naturally, those students who desire to pursue any course of study in which the classical languages are needed. Various positions in the public service are opened only to those who have completed the work of one of the higher schools.<sup>27</sup> Endeavor is now being made to displace this rigid system by a more flexible one, so that especially brilliant students who have completed the work of the lower schools may attend a special secondary school (Aufbauschule) which will prepare them for university entrance.<sup>28</sup>

<sup>25</sup> Lexis, W. H., A general view of the history and organization of public education in the German Empire (trans. by Tamson), pp. 54 ff.

<sup>26</sup> *Ibid.*, p. 54 ff.; also Handwörterbuch d. Kom. Wiss., Bd. III, p. 723 ff.

<sup>27</sup> Lexis, p. 62; Handwörterbuch d. Kom. Wiss., Bd. III, p. 744.

<sup>28</sup> See Reichsministerialblatt, 1925, p. 231; also de Grais, p. 525.

*Higher Schools for Girls.* The higher schools for girls fall into three main groups, called, respectively, Female Schools (Frauensschulen), Seminaries for Female Teachers (Lehrerinnenseminare), and Scholastic Institutes (Studienanstalten). The first two are sometimes called by the general name, lyceum, or higher lyceum (Oberlyzeum). The object of the first type of school is to give a good general education, broadening and cultural, and to train girls as future housewives and as useful members of society. The second kind of school, as its name indicates, trains girls for the teaching profession. The scholastic institutes prepare girls for entrance to universities. They offer courses corresponding in general to the courses for boys in the Gymnasias, Realgymnasias, and Oberrealschule.<sup>29</sup>

*Religion in the Schools.* Throughout the school system religion occupies a prominent place. Every student, in every school below the university, must normally receive religious instruction as a part of the regular curriculum, unless his parents especially apply to have him excused. An exception to this rule is found in the secular schools, which are now established in some places; also in the schools which substitute a philosophy of life for religion. These, however, are relatively few. Great pains are taken to see that each student is instructed in the religious faith professed by him or his family. Where numbers permit, different schools will be attended by children of different religions; otherwise, provision will be made for separate instruction. Ministers of religion are regularly appointed as members of local school authorities. In many small communes they are the official school inspectors for the state. Church and state are separated in the sense that there is no state church, but church and state work together in religious education.<sup>30</sup>

**Educational Administration.** The foregoing description of the educational system below the university is valid, with modifications, for the whole of Germany. No such general picture is possible, however, of the public administration of educational functions, for each state regulates this matter differently. Since the limitations of space preclude, as an alternative to a general picture, a complete study of educational administration in the states,

<sup>29</sup> See Handwörterbuch d. Kom. Wis., Bd. III, p. 748 ff.

<sup>30</sup> See the national Constitution, Articles 137 (1), 146 (2), 149.

it seems advisable to examine the function in the largest state, particularly in view of the fact that Prussia serves as a model for other states in some respects.

The highest authority for educational administration in Prussia is the ministry for science, art, and public education, briefly called the ministry of education (*Kultusministerium*). All schools which form a part of the regular system (that is, the common schools, the intermediate schools, and the higher schools), as well as the universities and the advanced schools of art and of technology, are under this ministry. Certain special schools are supervised by the respective ministries of commerce and of agriculture. The ministry of education is organized into several divisions, which include among others a division for the common school system, one for physical education, one for the higher schools, and one for science, universities, and technical high schools.<sup>31</sup>

The district administrative authorities are the direct supervisors of the elementary and lower schools. They exercise this function through the "Division of churches and schools," which forms a part of their organization, and by means of school inspectors for various areas, especially the county and the commune. The higher schools are supervised in each province by an independent organ called the provincial school board (*Provinzialschulkollegium*).<sup>32</sup> The chairmanship in this board is held by the over-president of the province.

The constitutional enactments of 1859 provided that the communes shall support the common schools and direct their external affairs, with financial aid from the state if necessary.<sup>33</sup> A law of 1906 develops this principle.<sup>34</sup> It provides that as a rule each city constitutes a school district or school union (*Schulverband*); other

<sup>31</sup> See ordinance of September 5, 1877 (*Gesetzsammlung*, p. 215); *Reg. Instr.*, October 23, 1817 (G. 248); *Kab. Ord.*, December 31, 1825 (G. 1826, p. 5); *Bek.* November 15, 1918 (*Zentralblatt für die gesamte Unterrichtsverwaltung*, p. 674); Ordinance of February 7, 1921, G.S. p. 261; *Ministerialblatt der Verwaltung für Landwirtschaft u. s. w.*, 1923, p. 988; 1924, pp. 54, 711; 1925, pp. 289, 416.

<sup>32</sup> *Reg. Instr.*, 1817 (G.S. p. 248); *Ord.* 1925 (G.S. 1826, p. 5); Law of April 27, 1920 (G.S. p. 123); Law of June 19, 1923 (G.S. p. 283). The provincial school board of Berlin also supervises the lower schools.

<sup>33</sup> *Verf. Urkunde für d. Preuss. Staat*, of January 31, 1850 (G.S. 1850, p. 17), Articles 24, 25.

<sup>34</sup> *G. betr. die Unterhaltung der öff. Volksschulen*, G.S. 1906, p. 335.



communes may either constitute separate school unions or unite with neighboring communes to form joint school unions (Gesamt-schulverbände). The supervisory authorities of county or district decide questions regarding the formation, alteration, and dissolution of joint school unions; complaints lie to the provincial council.<sup>35</sup> The establishment of the school budget, the granting of the necessary means, the administration of the school property, the right to represent school property in respect to outside parties, and the appointment of officers, belong to the communal organs. Other administrative affairs of the common schools in the commune are handled by the school committee (Schuldeputation), which is an organ of the communal directorate and as such is required to carry out its instructions. The school committee also shares in the duty of school supervision which was bestowed upon the communes by the Prussian Constitution of 1850 and was retained by them under a law of 1872.<sup>36</sup>

The school committee includes from one to three members of the communal directorate, and the same number of members of the communal representative body; with not less than the same number of experts in educational and common-school matters, one at least of whom must be a principal (Rektor) or teacher in a common school. To these are added an Evangelical and a Catholic pastor, and a Rabbi if there are more than twenty Jewish children attending the common schools. The school inspectors of the county may attend meetings of the local school committee, and must be heard at any time upon their own request.<sup>37</sup>

Through a local act, which requires the consent of the supervisory authorities, special school commissions may be established which act as organs of the school committee in watching over the special interests of one or more common schools.<sup>38</sup>

The regular organs of the rural communes which constitute independent school unions establish the school budget, grant the necessary means for schools, approve the accounting, and represent the property interests of the schools in the rural communes.

<sup>35</sup> *Ibid.*, Sections 1-3; Zuständigkeitsgesetz, Title VII.

<sup>36</sup> *Ibid.*, Section 43; GS. 1872, p. 183.

<sup>37</sup> Law of 1906, Section 44. Certain modifications of the above provisions are permitted, under circumstances specified in the law.

<sup>38</sup> *Ibid.*, Section 45.



In such communes, the affairs not administered by the regular communal authorities are entrusted to a school directorate. The school directorate consists of the mayor, a teacher determined upon by the school supervisory authority, a minister of religion, and from two to six citizens.<sup>38</sup>

A rural commune with more than 10,000 inhabitants may establish a school committee under the same conditions and with the same competence as in the case of the urban commune. The same is true of a rural commune with more than 3000 inhabitants, subject to the consent of the supervisory authorities.<sup>39</sup>

The establishment of the budget, the granting of funds, the supervision of accounts, and the looking after the property interest of the schools in the joint school unions is carried out through the school directorate and the director of the union. The latter is the executive authority. The school directorate consists of representatives of the communes belonging to the consolidated school district. Each commune must have at least one representative, and the entire number must be at least three.<sup>41</sup>

The director of the union and his representative are selected by the school supervisory authorities from among the members of the school directorate. In case no suitable person is found in the directorate, the supervisory authority may select another person to serve in this capacity. The director of the school union prepares the decisions of the school directorate, has the chairmanship in its meetings, and executes its decisions.<sup>42</sup>

*Teachers in the Common Schools.* Teachers and principals for the common schools are appointed from the list of those qualified. "The teaching is exclusively entrusted to teachers educated for their profession on strictly methodical lines, and certificated by the state."<sup>43</sup> The selection of teachers is made as follows:

When a school union has not more than seven teaching positions, the state authorities rather than the local authorities make the appointments. In other school unions, the school supervisory authorities fill one-third of the positions; the other two-thirds are

<sup>38</sup> *Ibid.*, Sections 46, 47.

<sup>40</sup> *Ibid.*, Section 47.

<sup>41</sup> *Ibid.*, Sections, 49, 50.

<sup>42</sup> *Ibid.*, Sections 51 ff.

<sup>43</sup> Lexis, p. 90.

filled by the free choice of the school union if the total number of positions in the union is more than twenty-five; if fewer, the communal authorities must choose among three candidates for each position, selected by the school supervisory authorities. As vacancies occur, they are filled by the school union and by the state supervisory authorities in alternation. All selections require the consent of the latter; if two candidates successively proposed by the school union for a given position are unacceptable to the supervisory authorities, they may appoint a person to fill the vacancy.<sup>44</sup>

*Legal Position of Common School Teachers.* As has been pointed out earlier, the national Constitution requires that teachers in the common schools shall have the rights and duties of state officers. It does not declare that they are state officers; but the Reichsgericht has recently decided that they are indirect state officers.<sup>45</sup> A new salary law in Prussia provides, in addition to the basic salary, for locality allowances and allowances for wife (or dependent husband) and children. The regular legal remedies are open to teachers for deciding salary claims. Pension provisions are similar to those for other public officers, but there is a special school pension fund to which all school unions must contribute.<sup>46</sup> In matters of discipline, teachers in the common schools are subject to the same provisions that apply in general to non-judicial officers.<sup>47</sup>

Teachers of every rank and grade have united in national professional associations, which, like the other associations of this kind, have a great deal of influence.<sup>48</sup>

For every fifty children in a school, one parent is elected to serve a two-year term as member of the Parents' Council (Elternhaus or Elternbeirat). This council meets with the principal and teachers of the school, to present the views of parents

<sup>44</sup> Volksschullehrerdienststeinkommengesetz of December 17, 1920, revised as of February 18, 1925 (GS. p. 17).

<sup>45</sup> RV. Article 143; RGZ. Bd. 85, p. 22 ff.; Bd. 97, p. 312 ff.; Oberverwaltungsgericht, Bd. 72, p. 234 ff.

<sup>46</sup> GS. 1925, p. 17 ff.

<sup>47</sup> GS. 1852, p. 465; GS. 1917, p. 49; GS. 1919, p. 29; GS. 1922, p. 208; GS. 1924, p. 578.

<sup>48</sup> For the names of the most important associations of teachers, see de Grais, p. 508.

upon such matters as school management and educational needs in general. This holds good of all public schools in Prussia.<sup>49</sup>

*Intermediate Schools.* The communes—subject to the consent of the county committee or the district administration—may establish intermediate schools which have a somewhat richer curriculum and longer course of study than the common schools. With the permission of the state supervisory authorities, tuition may be charged for instruction in these schools. The state may make grants toward the support of intermediate schools, based on the number attending them. Teachers must have higher qualifications than are required for teachers in the common schools. A special salary law and various other special enactments apply to teachers in the intermediate schools, but their general position is similar to that of other public officers.<sup>50</sup>

Since the intermediate schools are classed as lower schools, they are supervised by the ordinary authorities for school supervision, particularly by the district administration. In the cities, immediate supervision may be carried on by the regular school committee or by a special curatorium for intermediate schools.

*Higher Schools.* The higher schools in Germany are established by the state, by communes, by foundations and by private associations. The majority of the Gymnasien are state institutions, while the Realgymnasien, the Oberrealschulen, and the Realschulen are largely communal undertakings.<sup>51</sup> There is no general law in Prussia which regulates the organization and administration of higher schools, but many state and national laws apply to certain aspects of these matters. A cabinet order of December 31, 1825,<sup>52</sup> organized the provincial school board, which is still the chief supervisory authority over the higher schools.

<sup>49</sup> Erl. betr. Elternbeiräte, of November 5, 1919 (Zentralblatt f. d. gesamte Unterrichtsverwaltung in Preussen, p. 662; Wahlordnung of April 12, 1922, 2 Beilage zu *ibid.*, 1922, Heft 8.

<sup>50</sup> Mittelschullehrerdieneinstellungsgesetz, etc., GS. 1924, pp. 61, 473, 625. For many further references to laws and ordinances affecting teachers in intermediate schools, see de Grais, p. 523. For more details, see Kirchert, Handbuch für Mittelschulen in Preussen, 1926.

<sup>51</sup> For a list showing the numbers for each class, see de Grais, p. 525. *Ibid.*, pp. 524-28, gives numerous references to laws and ordinances governing the higher schools.

<sup>52</sup> Prussian Gesetzsammlung, 1826, p. 5 ff.

*Local School Authorities.* Through a ministerial order of October 1, 1918,<sup>63</sup> which was amended by an order of the ministry of July 21, 1921,<sup>64</sup> the cities are allowed to establish a school committee, which is competent for the administration of the current city affairs of the higher schools. The school committee consists of the mayor, two further members of the magistracy, two members of the city assembly, from two to four citizens, and two to four teachers in the higher schools. The members of the magistracy are selected by the mayor, the others by the city assembly. The city council and the school committee must work together in respect to certain matters, especially financial plans. The whole question of school finance is now under consideration in Prussia, and will probably be the subject of uniform legal regulation.

*Student Self-Government.* The principle of student self-government is not wholly new, but it has been given new impetus during the last few years. Ministerial orders have authorized the election of a "speaker" by each class at the beginning of every half-year. The speaker and the other officers of the class constitute a class committee; the speakers of the upper classes constitute the students' committee. The latter organ selects a member of the faculty as advisor. At least once a month a class meeting is held at which matters of interest to the class in particular or the school in general are discussed. There can be no doubt that the interest taken by the state ministry in a matter apparently so trivial as class organization demonstrates a conviction that the training thus received in self-government and practical politics on a small scale will be of direct benefit in the social and political responsibilities of later life.<sup>65</sup>

*Teachers in the Higher Schools.* The classification of positions of principals and teachers in the higher schools is regulated by the state salary code of 1920;<sup>66</sup> and their educational qualifications are regulated by an ordinance of 1917.<sup>67</sup> Those who desire to teach in the higher schools must add to a university training two years of preparation, as Referendars, and must then pass an examination which covers both educational qualifications and knowledge of ped-

<sup>63</sup> Zentralblatt der Unterrichtsverwaltung, 1918, p. 634.

<sup>64</sup> *Ibid.*, 1921, p. 298.

<sup>65</sup> Zentralblatt der Unterrichtsverwaltung, 1918, pp. 710, 724; 1920, Erlass v. April 21.

<sup>66</sup> Beamtendiensteinkommensgesetz, GS. 1921, p. 135.

<sup>67</sup> Zentralblatt, etc., 1917, p. 648.

agogy. If successful, they receive the title of "Assessor in Scholarship" (Studienassessor), and are entered on the list of candidates of a provincial school board. Even during the years of preparation they are state officers,<sup>58</sup> with an honorable career mapped out for them in which they rise step by step from Referendar to Assessor, and from Assessor to Councilor (Studienrat). They also have an assured salary.<sup>59</sup> Teachers are appointed by the provincial school board, and principals by the state ministry.<sup>60</sup> The teachers in the higher schools have the rights and duties of state officers, and are therefore subject to the provisions affecting such officers in respect to salary rights, pensions, etc.<sup>61</sup>

The higher schools are supported in part by the communes, and in part by grants from the state.

*The Universities.* All the German universities are state institutions. They "did not spring up spontaneously, but were founded by the governments. At first the state merely granted endowments and privileges; the internal affairs, instruction and examinations, were independently ordered and administered by the corporation."<sup>62</sup> After the Reformation the Protestant rulers of the states gained spiritual powers in addition to their secular powers, so that the "Universities became government institutions whose function it was to train officials for the secular and spiritual administration, and the university teachers, with the title of professors, became salaried officials of the state."<sup>62</sup> The universities gradually gained much in internal freedom, till at the present time they occupy a dual position. "On the one hand, they are state institutions and on the

<sup>58</sup> *Ibid.*, 1912, p. 418.

<sup>59</sup> See Ordinance of July 28, 1917, *Zentralblatt der gesamte Unterrichtsverwaltung*, 613; Executory order of April 24, 1924, *ibid.*, p. 152; order of April 17, 1912, *ibid.*, p. 418; the examination ordinance of May 22, 1922, *ibid.*, p. 257, and of December 11, 1924, *ibid.*, 1925, p. 7; order of February 17, 1925, *ibid.*, p. 76.

<sup>60</sup> Allgemeines Landrecht II, 12, Sections 54-64; Ordinance of December 9, 1842, *Gesetzsammlung*, p. 1; order of November 10, 1862, *Gesetzsammlung*, p. 41; order of January 2, 1863, *Zentralblatt u. s. w.*, p. 12; provincial order, March 13, 1867, *Ministerialblatt für die Preussische innere Verwaltung*, p. 113; order of July 28, 1892, *Zentralblatt u. s. w.*, p. 735. For a long list of recent laws and ordinances, see de Grais, p. 524 ff.

<sup>61</sup> Law of July 25, 1892, *Ges. Sam.* 219; Assignment of October 21, 1892, *Zentralblatt u. s. w.*, p. 713.

<sup>62</sup> Paulsen, *German universities* (1906 ed.), p. 72. For an excellent brief description of the German universities, see Lexis, pp. 1-13.

other, they have the character of free scientific corporations. As state institutions they are founded, supported, and administered by the government. From it they receive their organization and laws. The regulations governing the universities and the faculties are passed by the government, usually with the advice of the corporations. In Prussia the faculty statutes are prescribed by the ministry of education. The government also defines the function of the universities and grants them their privileges."<sup>63</sup>

Nearly all German universities are divided according to a now ancient custom, into four faculties, as follows: The theological faculty; the legal faculty; the medical faculty; and the philosophical faculty. The names of the first three faculties sufficiently explain their scope, but a word of explanation is needed in regard to the philosophical faculty. It covers "the entire realm of nature and history,"<sup>64</sup> rather than the more narrow field of logical and metaphysical speculation which its name might imply. The sciences and the humanities are included in the scope of the philosophical faculty. It also provides much of the general cultural and broad educational foundations of students in the other faculties; and, finally, it prepares for the teaching of many subjects.<sup>65</sup>

University teachers are of several ranks. The highest rank is that of "ordinary professor," a title which is equivalent to "full professor" in an American university. The next rank is that of "extraordinary professor," which may be compared to "associate professor." Only ordinary professors may vote upon matters of university administration. Private docents are independent educators who have the privilege of giving lectures in a university, which are accepted for scholastic credit. The rooms and library of the university are made available to private docents, but as a rule no salary is paid to them, and their income is derived from lecture fees. Lecturers and special instructors are also connected with the teaching force. University teachers have the rights and duties of state officers.<sup>66</sup>

A university is a public law corporation, operating under a state charter. It is self-administering in respect to its internal affairs,

<sup>63</sup> Paulsen, p. 76.

<sup>64</sup> *Ibid.*, p. 409.

<sup>65</sup> *Ibid.*, also de Grais, p. 529.

<sup>66</sup> For a long list of laws governing in Prussia, see de Grais, p. 530.

though subject to state supervision. The "great senate," composed of all ordinary professors, with representatives of extraordinary professors and private docents, is the body which acts on internal affairs such as questions of curriculum, discipline, nominations for teaching positions, and the like. It sends memoranda, information, and requests to the ministry of education,<sup>67</sup> and treats with the state authorities. The rector, who is the chief administrative officer of the university, and the deans of the various faculties, are elected by the great senate. A smaller administrative committee called the senate is also elected by it. These elections hold for one year.

The state exercises general supervision over university affairs, more particularly over financial administration, through an agent with the title of curator, who is appointed by the ministry of education. Since faculty members have the rights and duties of state officers, the state has a share in their appointment, making the formal appointment of full professors upon the nomination of the great senate. State laws, as well as ordinances and orders of the ministry of education, control the university in certain respects. Thus, a law of Prussia forbids the transfer or retirement of regular university teachers with official status, except with their own consent.<sup>68</sup> Private docents and teachers in the technical higher schools of Prussia are subject to disciplinary measures, not only within the school, but by the disciplinary court for state officers.<sup>69</sup>

The financial support of universities comes principally from grants made by the state, although the fees of students, endowments, gifts, subsidies from various sources, and in a few cases revenues from their own property, may bring in considerable sums.

*Higher Technical Schools.* During the past century there has been a considerable development of higher technical schools in Germany.<sup>70</sup> These schools offer advanced education in engineering of various kinds, general science, physics, chemistry, architecture, etc.; and many of them bestow the degree of Doctor in Engineering or a similar title. Their internal administration and their relations with the state authorities closely resemble those of the universities.

<sup>67</sup> That is, the Kultusministerium, which does not bear the same name in all states.

<sup>68</sup> GS. 1852, p. 465 ff., Section 96.

<sup>69</sup> Allgemeines Landrecht of 1794, II, 12, Section 73; GS. 1898, p. 125 ff.; GS. 1908, p. 218 ff.

<sup>70</sup> See Dieckmann, p. 753; Lexis, p. 114 ff.; de Grais, p. 531.



Various special higher schools, such as agricultural, veterinary, forestry, and mining academies or other institutions, are found in Germany. Some of these are more or less connected with the universities, while some are independent.

These technical schools are financed by state grants (in addition to fees), and are supervised by the state ministries of education.

**Summary and Conclusions.** According to the new German Constitution, education is a function of the Reich, the states, and the communes. The chief task of the Reich consists in laying down certain fundamental principles governing education, or establishing basic laws, to the end that the educational system shall be somewhat uniform, that it shall be democratic, that the educational burdens shall be equitably distributed, and that there shall be similar standards throughout Germany. The Constitution itself lays down many of these norms and principles, such as freedom of education, the uniform regulation of the education of teachers, the rights and duties of teachers, compulsory education, free instruction and free school supplies, the principles governing religious education, and the sphere of state supervision over education. A number of these basic standards are not self-executing, but must be supplemented and made directly applicable by means of legislation. Until the national legislature acts, the states may do so, provided only that their enactments do not contravene the constitutional provisions. The states may also pass laws still further developing any general principles which may be set forth in the national laws. However, it is not necessary that the legislature of the Reich confine itself to general principles which must be applied through state legislation. It may, on the contrary, establish principles that are immediately binding law.

By and large, however, the Reich acts as the great regulating, norm-giving agency in respect to educational matters. The Constitution expressly provides that the entire supervision of the school system stands under the control of the states. In addition to acting as supervisory authorities, the states are the immediate and direct authorities for the establishment and chief financial support of the universities, the technical higher schools, and many of the secondary schools. The supervisory work of the state, and its other functions in connection with the educational system, are centered in the



ministry of education. The relations between state and school are in the hands of the immediate agents of this ministry, as regards the higher educational institutions, or of secondary authorities in the case of the common schools and the intermediate schools.

The communes directly administer and maintain the common schools and the intermediate schools, with necessary assistance from the state. The higher schools are maintained by the state, communes, and private foundations. The majority of the gymnasia are state institutions, while the other secondary schools are largely communal undertakings.

Thus, in education as in other spheres of governmental activity, the Reich is in general the normative authority, the state is by and large the supervisory and controlling authority, and the locality is the direct administering authority. The preceding pages have mentioned certain important exceptions from this rule.

The educational system of Germany is based on certain fundamental principles, the most important of which are the following:

1. Universal compulsory education, which must be carried on either in the ordinary schools or in continuation schools until the student is eighteen years of age.
2. A complete democracy of education for the first four years of school. This is accomplished by requiring all children of all classes to attend the first four years of the common schools together. Although this system has not been completely brought into force, it is an ideal established by the Constitution, which is to guide future arrangements.
3. Another basic principle in the organization of the school system is, that education beyond the first four years is to be based upon the child's capacity, aptitudes, and desires, and is not to depend upon the economic or social position of his parents. This principle has not been put entirely into effect as yet, but the establishment of numerous free scholarships in the schools which require fees, and of transfers from one type of school to another, are steps toward its realization.
4. A principle closely related to the foregoing is, that a variety of subjects shall be taught in schools, and that endeavors shall be made to fit each individual child for his future situation and occupation in life. Allowance is made for necessary changes and for the provision of opportunities to those who appear especially gifted, by certain opportunities for transfer. There are three main roads open to the child who has completed the work of the first four years; namely, the common school and

trade school way, leading to the trades, arts and crafts, and business; the intermediate school way, leading to general business, the intermediate state service, or domestic life, in case of girls; or the way of the higher schools, which opens opportunities to certain positions in the public service, and prepares for entrance into the advanced technical schools or universities. Though all the higher schools may lead into the universities, the way is further differentiated according to the course which is to be pursued there. The road through the higher school and the university or advanced technical school is the only one open to those who wish to enter the learned professions, such as law, medicine and theology, or the higher governmental service, such as teaching in the universities and higher schools, the higher administrative service, the judicial service, and the higher technical services.

5. Not only must the educational system prepare for various occupations, but it must bear an especially close relationship to the administrative personnel system, or the requirements for entrance into the public service. The completion of definite educational requirements is necessary before it is possible to take an examination for the public service, and the examinations for the higher administrative services are tests of the training received within the educational system. For example, the first juristic examination and the first examination for the higher administrative service are based directly upon the work done in the juristic faculty of a university.
6. Not merely information, but character is the object of education. The school must lead the student to the acquisition of useful knowledge, habits of application and industry, moral stability, and a realization of his relations to society, as an individual and as a citizen of his commune, his state, his nation, and the world.<sup>12</sup>

The present organization of the school system, and the courses of study of the various classes of schools, are in part the result of long experience in educational methods, and in part the direct result of such recent adjustments and changes as have appeared necessary in order to carry the foregoing principles into effect; and particularly to open wider doors of opportunity to the less privileged classes.

<sup>12</sup> See a most interesting book, *Staatsbürgerliche Erziehung*, a symposium edited by Lampe and Franke. Among its other valuable papers is a reprint of the report of a committee called by the national Minister of the Interior to consider educational training for citizenship.

It should be realized, however, that the German educators have no intention of "leveling down," and lowering standards, under the pretext of democratising education. The student entering the university must be in possession of the tools needed for further work—mathematics, languages, sciences, history, and geography. Democracy is to be equality of opportunity, not disregard for educational standards.

Supervision over the common and intermediate schools is exercised by a hierarchy of authorities, at the head of which stands the state minister of education. The minister of education may exercise an extremely great influence over the educational system through his ordinance power. Many of the most fundamental regulations governing the educational systems of the various states are embodied in ministerial ordinances. The immediate control over the lower schools is practically always of two kinds: Control over matters of school finance, property, and maintenance, which is exercised by the organs of local government, thus integrating the finances of schools with those of the commune; and control over matters of management, selection of teachers, and other internal problems, which is exercised by a special agency that may be given the general name of school committee. The school committee is at one and the same time an organ for the commune and an agent for the central authorities.

The teachers in Germany have the rights of public officers, which include permanency of tenure, the right to a salary, freedom of speech and assembly, and the guarantee of proper trial before dismissal. They are, like officers, subject to disciplinary procedure, which involves warning and censure from the superior authorities, fines, and in extreme cases removal from office after trial. From the humblest village teacher to the most famous university professor, every teacher in Germany who does his professional duty is legally secure in his position. Instead of being discouraged from taking part in public life and political controversies, by public criticism and personal fear of dismissal, he is privileged, like other public servants, to express himself freely and even to hold office. The beneficial effects of security of tenure and freedom of expression upon the teacher's personal life and professional functions, the advantages to both teacher and community of a breaking down of the artificial barriers between the world of scholarship and the

world of affairs, are demonstrated in German life in very many ways, notably by the esteem attaching to the teaching profession in all its branches, and by the frequency with which important public services are entrusted to members of this profession. That such freedom and security have not always been absolute, and that views and political affiliations greatly opposed to those of the majority have sometimes militated against professional appointments and promotions, may be freely admitted; nevertheless, security and freedom do prevail among teachers in Germany to an extent almost unheard of in the United States.

German universities are all public institutions. Their status has been described as that of public corporations with special privileges. As such they are virtually self-governing. Their governing body is a senate composed of all ordinary professors, which governs and controls the internal affairs of the university. The senate also appoints the private docents and nominates the professors, who are appointed by the minister of education. It elects the rector and the deans of faculties, who serve for periods of one year. It is noteworthy that these administrative positions are regarded as burdens to be distributed, rather than as honors, distinctions, and rewards to be coveted. The work of the university teacher is recognized to be the discovery and the imparting of truth and knowledge, and the unavoidable administrative duties incident to the operation of the university are looked upon as disagreeable interruptions, endurable because they must be endured and mitigated by an increase in stipend, but lacking the inspiration of either scholarship or direct public service, and gladly laid aside at the end of the year.

That the German school system has its faults, like every other institution, goes without saying. Its faults have been listed many times in the past, as rigidity, narrowness of outlook, a severity of discipline which rules by fear and constraint, inadequate attention to the general welfare of the student, and a sacrifice of the many in order that the few may be highly trained for the learned professions and the public service. The universities have been accused of different faults, as too much vagueness in respect to requirements, and a near sighted pedantry. To what extent these and other faults exist to-day, it is hard to judge in view of the great alterations which are still in process in the entire educational system; but the whole body of current materials, from laws and ordinances to the

writings of persons actively engaged in educational work, shows that great efforts are being made to eliminate them, without sacrificing the high educational standards of which Germany has long been justly proud.

The merits of the system have gained equal recognition with its defects. That it has resulted in an almost entirely literate population, noted for industry, painstaking thoroughness, high moral standards, depth and strength of character, public spirit and patriotic devotion; that its secondary schools have produced exceptionally well-educated students, capable of concentrated thought and long, patient application, and more mature in mind than the students of the same age and comparable educational advantages in this country; that the graduates of the German universities are in general persons of broad culture and high scholarship—all this has been appreciated for generations past.

It is the present task of Germany to maintain these many and great merits, while reorganizing the school system in such a way that every child shall receive the cultural and vocational training to which his own capacities are best adapted; and thus to make the schools serve to their utmost capacity the needs of a democratic society and a free state.

## CHAPTER XVI

### THE ADMINISTRATION AND REGULATION OF ECONOMIC ENTERPRISES

**Railway Administration.** The German railways, up to about 1880, were largely developed, owned, and operated by private interests. From that time until the World War, with unimportant exceptions, they had been taken over by the several German states. By the Constitution of 1919<sup>1</sup> it was provided that the Reich should take over the ownership of the railways which serve public traffic and should administer them as a single undertaking. The transfer of the state railways to the Reich followed as a result of treaties between the several states and the Reich which became effective on April 1, 1920;<sup>2</sup> and as a transition measure the Minister of Traffic became Director General. Because of the depreciation of the currency, railway finances were in a serious situation in the latter part of 1923 and the beginning of 1924. The Cabinet decided, therefore,<sup>3</sup> to form an independent undertaking known as the "German Railways," with a legal personality through which the railways, as the property of the Reich, were to be administered.<sup>4</sup> This method of operating the railways, however, continued for only a few months, due to the fact that under the Dawes Plan for reparations it was arranged that the railways should be used as a basis for meeting approximately one-third of the reparations payments.<sup>5</sup> The Dawes Report, which provided in brief that Ger-

<sup>1</sup> Article 89.

<sup>2</sup> RGBl. 1920 p. 773.

<sup>3</sup> Acting under the so-called Authorization Law of December 8, 1923, which provided that the Cabinet might take measures which they considered necessary and urgent. See RGBl. 1923, I, p. 1179.

<sup>4</sup> RGBl. 1924, I, p. 57.

<sup>5</sup> At the time that the Dawes Committee made its report the railways were in quite a favorable position in respect to their capital, to contribute toward the settlement of the reparations, since their indebtedness had practically been wiped out through the depreciation of the mark. See Sir William Acworth, Reorganization of the German railways, in *Railway Age*, Vol. 77, p. 799 ff.

many should own the railways, but place them for a period of years under the management of a commercial company with a board of directors containing representatives of both the shareholders and the creditor Allied Powers,<sup>6</sup> was assented to on behalf of Germany through the London Agreement.<sup>7</sup> It was put into effect by two fundamental laws, the National Railway Law<sup>8</sup> and the National Railway Personnel Law.<sup>9</sup> A statute embodying a concession as to organization and administration of the railway corporation is added to and is an integral part of the National Railway Law.<sup>10</sup> The Railway Law and the supplementary statute follow in a general way the recommendations made by the Dawes Committee.<sup>11</sup>

*The Reparations Plan and Its Effect.* Since the administration of the German railways forms an integral part of the reparations plan, it is necessary to give a few words to that plan. Under the Dawes Plan, yearly reparations to an amount of 2500 million gold marks are to be paid from two general sources, (1) Contributions made through the budget, which in a standard year (1928-9 and thereafter) will amount to 1250 millions of gold marks, and (2) contributions from special sources, which for a standard year will equal the same amount. The income from special sources is to come from the interest and sinking fund on railway bonds to the extent of 660 millions of gold marks for a standard year; from the transport tax, to the extent of 290 millions of gold marks for a standard year; and from the interest and sinking fund on industrial bonds to the extent of 300 millions of gold marks for a standard year. It will thus be seen that nearly one-third of the reparations payments are to be made by the railways. "It is interesting to note that in a period of economic disturbance such as the year 1926 the Reichsbahn was able to make its reparation payments punctually and in full. . . . The Company . . . also . . . ensured the satis-

<sup>6</sup> Reports of the Expert Committees appointed by the Reparation Commission, presented to Parliament; p. 86 (1924).

<sup>7</sup> Gesetz über die Londoner Konferenz Vom 30 August 1924. RGBl. II, 289, and Anlage, *Ibid.*, p. 294 ff.

<sup>8</sup> RGBl. 1924, II, 272, hereafter referred to as RBG. (Reichsbahngesetz).

<sup>9</sup> RGBl. 1924, II, 287, hereafter cited as RPG. (Reichsbahn-Personalgesetz).

<sup>10</sup> RGBl. 1924, II, 281, hereafter cited as GS. (Gesellschaftsatzung).

<sup>11</sup> See report of the Expert Committees appointed by the Reparations Commission, p. 101 ff. See also Moulton, H. G., The reparation plan, and Chapter VIII of this book.

factory operation of the railway at reasonable rates, while at the same time making provision for the upkeep and development of its plant and rolling stock."<sup>12</sup>

*Legal Status of the Railway Company.* In accordance with the Dawes Plan, the existing German railways were transferred to a company known as the German National Railway Company, the legal status of which was fixed by the National Railway Law and the supplementary statute. The general legal relationships of the ordinary trading corporation are not applicable to this company, since it "is a corporation of a special kind, partly of a civil-legal and partly of a public-legal nature."<sup>13</sup> The company is to operate strictly under the terms of the concession agreement and the law; and no changes can be made in the conditions of the concession without the consent of the company and of the Trustee for the bondholders appointed by the Reparation Commission. This plan is to continue in operation until 1964, or a period of forty years from the time of its going into effect. Through treaty and contractual agreements, then, Germany virtually loses the right of control over the railways for this period.

The company's own capital stock consists of fifteen billions of gold marks, divided into two billions of preferred shares and thirteen billions of ordinary shares.<sup>14</sup> Eleven billions of bonds in the hands of the Trustee of the Reparations Commission complete the twenty-six billions of capital value at which the system is estimated.

The preferred shares are issued as payable to bearer, are transferable, and carry with them a right to the repayment of the capital by the termination of the concession, and the right to a preferred dividend.<sup>15</sup> The Reich guarantees the payment of these dividends. If at any time the Reich has had to pay a dividend in the place of

<sup>12</sup> Report No. 5 of the Commissioner for the German Railways, June 1, 1927. This estimate is corroborated by the Report of the Trustee for the German Railway Bonds, of May 31, 1927, which says that "the position of the Company may be considered to be in every respect satisfactory."

<sup>13</sup> Hue de Grais, *Handbuch der Verfassung und Verwaltung* (23 ed. 1926), p. 663. See also Lassar, *Reichseigene Verwaltung, Jahrbuch des öff. Rechts der Gegenwart*, Bd. 14, 1926, for argument that the Railway Association is not, strictly speaking, a stock company, but a juristic person of public-legal nature.

<sup>14</sup> *Gesellschaftsatzung*, Section 3. Referred to in this chapter as GS.

<sup>15</sup> GS. Section 4.



the company, the Reich may ask the Court of Audit to verify the books of the company in order to decide if recourse to the guarantee might have been avoided, and to consider the means whereby further guarantee payments can be avoided.<sup>16</sup> One-fourth of the total proceeds from the sale of preferred shares is to become the property of the Reich, and three-fourths is to become the property of the company.<sup>17</sup> The sale so far has been chiefly to the Reich itself. Out of 881 millions of preferred shares issued to June 1, 1927, 88.5 per cent were taken up by the Reich or the public services.<sup>18</sup>

The common shares are registered in the name of the Reich, or if the Cabinet requests it, in the name of a German State. These shares are entitled to a dividend after the meeting of payments into the sinking fund, interest on the reparations bonds, interest and sinking fund charges on other bonds, and reserve and dividends on preferred shares.<sup>19</sup>

The company was required to issue (without payment) to the Trustee appointed by the Reparations Commission, bonds to a nominal value of eleven billions of gold marks, bearing interest at the rate of 5 per cent.<sup>20</sup> After the fourth year from the commencement of the concession a sinking fund of 1 per cent per annum on the total amount of the bonds issued is to be applied to their redemption.<sup>21</sup> All of the real estate and equipment of the railways is mortgaged for the payment of these reparation bonds.<sup>22</sup>

<sup>16</sup> See GS. Section 25, and Report of Commissioner for the German Railways, June 12, 1926, p. 9.

<sup>17</sup> GS. Section 5.

<sup>18</sup> Report of the Commissioner for the German Railways, June 1, 1927. "From the preference shares issued to the public, an amount of one million has been reserved to be subscribed by the Company's staff. This should be noted because it shows the efforts made by the Company in order to interest its staff in the prosperity of the enterprise." For a discussion of the application of national credits, and for an interesting description of the use of electric lines by the Reichsbahn, see the same report.

<sup>19</sup> GS. Sections 8, 9, 25.

<sup>20</sup> The justification of seizing the first mortgage bonds of the railroads for reparation purposes is explained on the ground that the fall of the mark has practically wiped out the present railway debt, and that it is only fair that the railroads should assume a mortgage debt for the benefit of the Allies."—Moulton, p. 25.

<sup>21</sup> GS. Section 8.

<sup>22</sup> RBG. Section 4.

The special status of the Railway Association, and the terms of the agreement concerning the reparation bonds, have necessitated special arrangements for the financial management and control of the railway business.

According to Sec. 30, paragraph 3, of the [Railway] Law, the national budget law is not applicable to the National Railway Association. Therefore a new regulation was established by the law on the examination of accounts, of November 8, 1924.<sup>23</sup> Until this time the examining offices of the Railway had made a preliminary examination for the Court of Accounts, which bore the responsibility. Now the business of the chief examining service is carried on in connection with the head administration and the examining services of the National Railway Direction, which are placed directly under it, on their own responsibility. . . . The examination must especially inquire whether in all fields the fundamental principle of an economical conduct of business has been observed, "and no moneys have been expended which could have been decreased or saved without injuring the purpose of the business." (Sec. 7, Rechnungsprüfungsordnung). Beside this stands the equally important fundamental principle of the "immediacy of the examination." . . . The law on the examination of accounts provides on this point: "The examination of documents shall be connected with the events of administration; and shall take place immediately in connection with, or directly after, the delivery and cash entry of the documents" (Sec. 9, paragraph 3, RPO). This is, in the spirit of businesslike management, an essential provision. Finally, the director of the examining service as a rule likewise looks after the affairs of the treasury council [Kassenrat] (Sec. 3, par. 4, RPO). He has in this capacity . . . important possibilities of exercising influence upon the preparation of measures. . . . These provisions are the foundation upon which the National Railway Administration . . . is to be transformed from a cameralistic business into one as profitable as possible. . . . It remains to be seen, in how far the practice on the ground of the RPO will influence the cameralistic examination of accounts of the Reich and the States.

An important development . . . is, further, the *accounting according to railway districts*, which went into effect on January 1, 1926. . . . In the future, profit and loss accounts are not to be set up for the whole undertaking, but rather for individual districts; in this manner absentee directorship is done away with. On the expense side are balanced the outlays which the individual districts make for one another. As a fundamental principle, all receipts and

<sup>23</sup> Reichsbahn Zeitschrift, 1924, No. 19, p. 9. Anl.

expenditures are to be deducted, which actually in whole or in part were received or spent on account of other districts. The individual district must bear a proportional share of the total expenses of the Association. Through this change, for the execution of which a chief settlement office is established in connection with the Railway Central Office, the individual districts become independent economic subjects from the standpoint of accounting. The financial bearing of individual directorates is necessarily strengthened; the head administration, also, as a result of this specialization, can secure a new vision of the economic direction of the individual districts.<sup>24</sup>

*Its Rights and Powers.* The railway corporation was given the exclusive right to carry on the business of all railways which, upon the day when the law went into effect, were managed by the former "German Railways"; also all railways of general traffic, which might later become the property of the nation. It was given also the exclusive right to build and operate new railways of general traffic. The national Cabinet can lay upon the corporation at any time the building and management of new railways of general traffic. If the corporation thinks that the construction and operation of these new lines will not serve general traffic, or that they will compete unfavorably with its other lines, the cost of building and operation may be placed upon the Reich. The corporation has a claim against the Reich if a deficit is caused by the new lines.<sup>25</sup>

The building of new lines for the extension of private railways of general commerce and the changing of the railways not serving general commerce into such as serve general commerce, can only be undertaken when no unfavorable competition will result.<sup>26</sup> Whether a railroad is to be considered as one of general traffic, is decided by the national Minister of Traffic after a hearing of the state administrations concerned and the railway corporation.<sup>26</sup>

Without the consent of the national Cabinet and the Trustee, the corporation can neither partly nor wholly assign the right of operation to third persons.<sup>27</sup>

<sup>24</sup> Lassar, *Reichseigene Verwaltung*, etc., *Jahrbuch des öff. Rechts der Gegenwart*, Bd. 14, 1926, pp. 204, 205.

<sup>25</sup> RBG. Section 10.

<sup>26</sup> RBG. Section 11.

<sup>27</sup> RBG. Section 12.

The right of the company to operate the railways terminates on December 31, 1964, on the condition that the entire reparation bonds and the entire preferred shares are amortized, retired, or settled.<sup>28</sup> The property in the national railways belongs to the Reich, including the equipment and real estate acquired in the future,<sup>29</sup> and upon the termination of the concession, the entire right of operation as well as all other rights and obligations will revert to the Reich.<sup>30</sup>

*Its Organization.* The organs of the corporation are the administrative council (board of managers) and the directorate.<sup>31</sup> The board of managers consists of eighteen members. One-half of the members of the board are appointed by the Cabinet of the Reich, and one-half by the Trustee representing the reparation bonds. Of the members appointed by the Trustee five may be of German nationality. Four of the seats on the board, filled by appointees of the Cabinet, are at a later time to be assigned to the holders of preferred shares in such a way that for each 500 millions of preferred shares issued, one representative of such shares shall be entitled to a seat on the board. Representatives of the holders of preferred shares are to be of German nationality.<sup>32</sup>

The members of the board must be business men of experience or professional railway men. They may not at the same time be members of the Reichstag, of a Landtag, or of the national or state cabinets.<sup>33</sup> At the end of each period of two business years, three members of each of the two groups, consisting in the one case of the members appointed by the government and the representatives of the preferred shares, and in the other case of the members

<sup>28</sup> RBG. Section 5.

<sup>29</sup> RBG. Section 6.

<sup>30</sup> RBG. Section 41.

<sup>31</sup> RBG. Section 18.

<sup>32</sup> GS. Section 11. It is interesting to note in this connection that of the 881 millions of marks worth of preferred shares issued up to November 20, 1926, the Reich itself has subscribed to all but 150 millions. Report No. 4 of the Commissioner for the German Railways, November 20, 1926. By law the proceeds of these shares were to go to the Reich, but the shares themselves are now in its possession. Since these shares are held by the Reich, of course it controls the vote that goes with them. By thus buying in all of the preferred shares, it would be possible for the Cabinet to remain in control of the appointment of one-half of the members of the board.

<sup>33</sup> GS. Section 12.

appointed by the Trustees, retire from the board. At the outset, the members to retire at the end of two years and at the end of four years are chosen by lot; subsequently each member shall remain in office for six years.<sup>34</sup> The president of the board of managers, who must be a German citizen, is elected annually by the board. When the holders of preferred shares are represented by at least three members, the president is to be chosen from among these.

The board of managers supervises the business operations of the corporation and decides all significant, fundamental, or generally important questions, such as the establishment of estimates, the establishment of the balance and the profit and loss account, the distribution of profits, and the establishment of the salary and pay regulations. Proposals or matters which require the approval of the Cabinet must be reported to the board. The board further represents the company in relation to the members of the directorate.<sup>35</sup>

The board of managers may delegate its powers, insofar as it sees fit, to a business committee consisting of six members, three from the representatives of the preferred shares and the Cabinet and three from those appointed by the Trustee. Other committees may be appointed.<sup>36</sup>

The directorate, which consists of the Director General and one or more directors, all of whom must be Germans, is charged with the management of the railways. The Director General is appointed by the board of managers for a three-year term and is eligible for reelection. The directors are appointed by the board on the recommendation of the Director General. No member of the directorate may belong to the board of managers. All of the appointments must be confirmed by the national President. The board of managers may at any time remove the Director General by a three-fourths majority of the votes cast.<sup>37</sup>

The Director General is responsible for the management of the company's affairs; his detailed functions are determined by the business regulations approved by the board. Neither the Director

<sup>34</sup> GS. Sections 13 and 14.

<sup>35</sup> GS. Section 15.

<sup>36</sup> GS. Section 17.

<sup>37</sup> GS. Section 19.

General nor the directors may engage in any other professional occupation, except with the approval of the board of managers.<sup>38</sup>

In order to protect the rights of the reparation bonds, a Railway Commissioner is appointed by the foreign members of the board of managers.<sup>39</sup> He participates in the meetings of the board, and of the business committee and other committees of the board, but does not have a right to vote. He has the general right of inspection of the whole railway system and its works and offices. There are communicated to him all reports, statistical and financial returns, proposals for extraordinary expenditures, changes in rates, or the granting of exceptional rates, and other matters requiring the approval of the Director General. He may at any time call for any other reports, returns, or statistics, which he considers necessary in order to form an independent opinion. If measures in connection with construction, operation, or rates tend to menace substantially the rights or interest of the holders of reparation bonds or the rights of the Reparation Commission, the Commissioner discusses the question with the Director General. In case he is unable to persuade the latter to change his course of conduct, he lays the question before the board of managers, which thereupon takes such action as it sees fit. The Commissioner may request the board to revoke the appointment of the Director General on account of violation of the terms of the concession, or failure to comply with the instructions of the board. A simple majority is sufficient for removal in this case.<sup>40</sup>

The Commissioner has exceptional powers, as follows :

In case the half-yearly payments for bond service are not made, he may issue orders, either to stop expenditures which he considers unjustifiable, or to increase the rates to an extent which he considers necessary. He may also ask that the Director General be removed, and the board must comply with his request. These powers cease when the deficit has been made good.

In case the deficit has not been made good within six months, the Commissioner may, in agreement with the Trustee, take such actions as they consider necessary, even to the extent of operating the railways himself or selling such rolling stock and other property as is not necessary for the operation of the railways.

<sup>38</sup> GS. Section 20.

<sup>39</sup> GS. Section 21.

<sup>40</sup> GS. Section 22.

As a final measure, the Railway Commissioner may lease the operating rights in whole or in part. The carrying out of these measures must have in advance the decision of the judge of arbitration, discussed below, that the measures to be taken are necessary and suitable, to guarantee the carrying through of the payment of the reparation bonds. In so far as the Railway Commissioner takes over the operation of the railways, he is subject to the legislative provisions governing the railways."

*Control of the Cabinet Over the Railways.* Although the Cabinet has very little control over the changes in the administrative organization and detailed regulation and management of the railways, due to legal and contractual provisions which it cannot influence or change, it does have a general supervisory power, the right of consent in respect to specific matters, and a certain right of coöperation.

It has a general right to supervise the railways in order to insure safety of investment, safety of operation, and satisfactory service.<sup>41</sup> It must give its consent to the permanent establishment or the operation of a railway line or important station, to fundamental improvements or changes in technical equipment, or changes in the safety system; to the acquisition of other undertakings or participation in other undertakings, which do not serve the business purposes of the railways; and to the abolition of an existing classification of passenger carriages. The Cabinet also has a coöperative right in the establishment of rates and regular time tables for passenger traffic. It supervises the measures for the protection of emergency operation.<sup>42</sup> It can demand from the corporation all information of a financial character; and within its right of supervision, all information of an administrative or technical nature.<sup>43</sup>

The Cabinet has important powers in respect to rates. Its consent is required to changes in the executory provisions for the railway traffic code, in the normal rates, including general rate provisions, or in the classification of freight and incidental fees. The same is true in respect to the imposition, alteration, or abolition of international rates or exceptional rates, as well as all specially

<sup>41</sup> GS. Section 24.

<sup>42</sup> RBG. Section 31.

<sup>43</sup> RBG. Section 31.

<sup>44</sup> RBG. Section 32.

advantageous rates. The consent is considered as given, if within twenty days after the proposal of a change an answer is not received from the national Minister responsible for the supervision of railways. In all cases the Cabinet must give its decision to the tariff proposals laid before it, in the shortest time possible. The former rates remain in effect until the Cabinet has decided, or in case of difference of opinion between the Cabinet and the corporation concerning this decision, until the decision of an especial court or of an arbitrating judge (to be discussed later). The Cabinet may renounce the right of previous consent to rate changes, in cases where the public interest is only slightly affected. In such cases the rate changes are announced immediately to the Cabinet. The Cabinet can demand reductions of passenger and freight rates and other changes of rate provisions which it deems necessary for the interests of German political economy. In differences of opinion between the national Cabinet and the corporation, the special court or the arbitrating judge decides according to the provisions of law.<sup>45</sup>

The law specifically states that supervision as to the operation of the railways and the rates is to be so exercised by the national Cabinet, that the corporation will not be prevented from raising the income necessary for the interest and amortization service of the bonds, as well as for the preferred stock dividends and the retiring of the preferred shares.<sup>46</sup>

The corporation has to lay before the Cabinet the proposals for yearly and half-yearly time tables for passenger traffic. Proposals for the time tables of international trains must be communicated to the Cabinet previous to their international discussion. The Cabinet has the right to propose alterations, and the corporation must give serious consideration to such proposals. The corporation may conduct affairs with foreign administrations only with the previous consent of the Cabinet, to which is reserved also the right of final consent to any coöperation with foreign administrations.<sup>47</sup>

The construction of new railway lines, the acquisition of existing lines, and the changing of a subordinate railway operated by the corporation into a chief line, or the converse, are only permissible with the consent of the Cabinet. The plans for the construction of

<sup>45</sup> RBG. Section 33.

<sup>46</sup> RBG. Section 34.

<sup>47</sup> RBG. Sections 35, 36.



new and the changing of existing national railways properties (in so far as there are differences of opinion in regard to them between the police authorities of a state and the corporation) as well as plans for new stretches of railway, are to be finally established by the Cabinet. In order to conform to the national Constitution,<sup>48</sup> the law provides that the corporation's plans, together with the views of the state police authorities when required, shall be laid for final settlement before the national Minister competent for the supervision of the railways. The building plans, however, in so far as their establishment is not reserved to the national Cabinet, may be established independently by the railway company.<sup>49</sup>

*The Special Court and the Arbitrating Judge.*<sup>50</sup> Conflicts between the national Cabinet and the railway corporation concerning the interpretation of provisions of the Railway Law and of the supplementary statute, concerning measures based on either law, and other similar questions, are to be brought for decision to a special court. This court, which is constituted in connection with the Reichsgericht, consists of a chairman and two colleagues. The chairman and his substitute are appointed by the national President for five years. Both must be German judges of special experience and knowledge. Their reappointment is permissible. The colleagues are appointed for each case as it arises, by the President of the Reichsgericht; one upon the proposal of the national Cabinet and the other upon the proposal of the corporation. Certain provisions of the national law governing the Supreme Judicial Court<sup>51</sup> are made applicable; while the details of procedure are to be regulated by an order of business established by the president of the Reichsgericht.

In case the Cabinet or the corporation believes that to carry out the decision of the court would endanger the interest and amortization of the reparations bonds, either party may appeal within one

<sup>48</sup> The Constitution provides (Article 94, par. 1): When the Reich has taken over into its own administration the railways which serve general traffic within a specific territory, new railways serving general traffic can be built within this territory only by the Reich or with its consent. If the construction of new national railway properties or the alteration of existing ones affects the functions of the state police, the national railway administration must grant a hearing to the state authorities before making its decision.

<sup>49</sup> RBG. Section 37.

<sup>50</sup> RBG. Section 44.

<sup>51</sup> RGBl. 1921, p. 905.

month to the arbitrating judge.<sup>52</sup> Appeal may also be made, if within one year (or in case of rate questions, three months) after the court has been asked to make a decision, it has failed to do so, and if the delay is prejudicial to the reparations bonds. This appeal terminates process before the court.

Cases of conflict between the Reparations Commission, or a Power represented in it, or the Trustee, or the Railway Commissioner appointed to guard the rights of the bondholders, on the one side, and the German national Cabinet and the corporation, or one of these, on the other side, concerning measures based upon the Railway Law or the supplementary statute, or concerning other similar questions; or between the national Cabinet and the corporation in respect to the controversies described above, over the interpretation of the provisions of the Railway Law and the supplementary statute, are to be decided by an arbitrating judge until the full amortization of the reparations bonds.<sup>52</sup>

The arbitrating judge is to be chosen by the President of the Permanent Court of International Justice at The Hague, and shall, in case one of the parties concerned so desires, be a citizen of a neutral state. His decision is final and incontestable.<sup>52</sup>

It is needless to dwell upon the extent to which all these arrangements reflect the fact that the railways must bear a heavy burden of reparations payments, and idle to speculate as to the differences in organization and administration which might appear if Germany were entirely free from extraneous influences in the management of her national railway system. There is every reason to suppose, however, that the administration of the railways as a separate business organization rather than as a national department is a fixed principle.

*The Law of Officers of National Railways.* The status of officers, employees and workers connected with the national railway system is governed by a special law.<sup>53</sup> Such persons must in general be German citizens; and unless they are expressly employed subject to discharge, they are considered to be appointed for life. However,

<sup>52</sup> RBG. Section 45.

<sup>53</sup> National Railway Personnel Law, RGBI. 1924, II, 287. This law will be cited hereafter as RPG. The issuing of a personal code governing in detail the rights and official status of employees of the railway association, subject to the laws, is a function of the association (RBG. Section 19; RPG. Section 13).

they must accept transfers to other service of like nature and income.<sup>54</sup>

The courts competent for the discipline of officers of the Reich are likewise competent for that of the national railway officers, who are to be considered by such courts as national officers. The Law of Officers specifies the conditions of discipline.<sup>55</sup>

The national railway officers have the same rights of representation in respect to the company, that national officers have in respect to the national administration.<sup>56</sup>

The insurance provisions for railway employees are in general those of the National Insurance Code, but a few necessary changes are made.<sup>57</sup>

The effect of these various provisions is, that although railway employees are not national officers in the full sense, yet they are governed by national law and have most of the rights and duties of national officers, including in general permanence of tenure, discipline under conditions laid down by law, the right to a pension, and rights and duties in respect to insurance.

*Economic Undertakings Accessory to the Railways.* One of the interesting administrative problems in connection with the railway administration is that of the relationship to the principal enterprise of accessory undertakings, such as sleeping car operation, dining car operation, the selling of tickets, the operation of ticket agencies and travel bureaus, and the like. The three chief methods for the solution of this problem are found in practice in the United States, England, and Germany.

In the United States, accessory enterprises are operated to a considerable extent, as undertakings quite distinct from the railways. In England all organs charged with the handling of such enterprises are largely in the hands of the traffic enterprise itself; "the center of gravity of the accessory systems lies in the central administration."<sup>58</sup> Germany has developed a system of having these accessory undertakings managed by a company which, though separate and distinct in its organization, is partly under the financial ownership

<sup>54</sup> RPG. Sections 1-4.

<sup>55</sup> RPG. Section 5. See Chapter XI for court decisions that national officers may not "strike." In this sense railway employees are national officers.

<sup>56</sup> RPG. Section 6.

<sup>57</sup> RPG. Sections 9, 10, 11, 12.

<sup>58</sup> Die Nebenbetriebe der Deutschen Reichsbahn-Gesellschaft auf dem Gebiet des Personenverkehrs, in *Archiv für Eisenbahnwesen*, 1926, p. 1050.

of the railway association, and partly under its control by virtue of the fact that representatives of the railway association serve upon the managing board or authority of the accessory corporation. This system is very flexible, as will be seen. Moreover, it is by no means universally applied, since many minor enterprises do not come under it at all.

Among the most important of the accessory economic enterprises connected with the German railway system, in some way, are the "Mitropa," or Mid European Sleeping and Dining Car Company, the Mid European Travel Bureau, and the German Railway Motor Bus Traffic.<sup>60</sup> Many other enterprises, however, such as the sale of books and periodicals, the provision of selling-booths, restaurants, and luncheon counters, the insurance of baggage, and the like, are also quite important.

In a German periodical devoted to railway administration, appears the following list of functions performed by accessory enterprises in connection with railways.<sup>61</sup>

FUNCTION	ENTERPRISE PERFORMING FUNCTION
1. Development of Travel through	National Center for the Development of Travel in Germany
(a) Advertising	
(b) Travel bureaus	
a. Information	} Mid - European Travel Bureau (MER)
b. Sale of tickets	
c. Conduct of journeys	
2. Supplying Time Tables	Railway Guide Offices, and MER
3. Forwarding Baggage	Express Company; MER as middle-man
4. Insuring Baggage	European Goods-and-Baggage Insurance Stock Company; MER
5. Money Exchange	Exchange Offices; MER
6. Toilet facilities, conveniences for travel	Lavatory Company; selling booths
7. Providing Food	Station restaurants; Mitropa
8. Reading Matter	Station bookstands
9. Communication	Train Telephone Stock Company
10. Facilities for Sleeping	Mitropa
11. Comforts of Travel	Siesta, Ltd. <sup>62</sup>
12. Connections	German Motor Traffic Company, Ltd.
13. Lodging	Aid to Travel Stock Company

<sup>60</sup> Most of the material in the following paragraphs is obtained from an excellent series of articles by Rudolf Kohler, Die Nebenbetriebe der deutschen Reichsbahn-Gesellschaft, in *Archiv für Eisenbahnwesen*, 1926, Heft 5, Heft 6; and 1927, Heft 1.

<sup>61</sup> *Ibid.*, 1926, Heft 5, p. 1054.

<sup>62</sup> A company which rents cushions for use on trains, etc.

The Mitropa is a German stock company engaged in the business of providing sleeping cars and dining cars. It is capitalized for 10,560,000 marks, of which 960,000 marks is in preferred stock. Business contracts regulate its relations to both foreign railway corporations and the German National Railway Association. At present the latter possesses about one-seventh of the ordinary capital stock of the Mitropa, and appoints three members of its board of managers. In return for the forwarding of cars by the German Railway Association, the Mitropa pays annually 25 per cent of the net sum available for dividends, which must amount to at least 2 per cent on capital stock, if any dividend is declared. In addition, one-third of the price of each berth rented is paid over to the association.

The Mid-European Travel Bureau is a limited liability association established for the promotion of travel with a capital stock of 250,000 marks. The largest single stockholder is the German Railway Association, with 39.1 per cent of the shares. Various state governments hold more than 13 per cent; the great shipping enterprises, the North German Lloyd and the Hamburg American Line, together hold 25 per cent; and the remaining 22.5 per cent is held by railway and traffic enterprises in Hungary and Austria. The German Railway Association has three members on the supervisory council of the Travel Bureau.

Exclusive rights to the sale of tickets in Germany, outside the regular ticket offices in stations, are guaranteed to the Travel Bureau. It is given a discount on the tickets that it sells (though on the other hand it is forced to pay out a good deal in order to interest foreign travel bureaus in coöperating with it), it also acts as middleman for baggage insurance, and makes a profit on exchange of money and on the sale of foreign tickets. Since 1918 the Travel Bureau has been able to pay dividends of 10 per cent.

The National Center for the Development of Travel in Germany is a sort of advertising agency to promote travel from foreign countries into Germany, and also internal travel. It was organized in 1920 by the national Minister of Traffic. The form of this agency is that of a "registered association."<sup>83</sup> Its organs are a directorate,

<sup>83</sup> This title is given in Germany to associations of many kinds, scientific and otherwise, which are not business partnerships, stock companies and the like, and which may have no economic aims whatever; but which desire official recognition and registration in order that they may hold property in their own right, buy and sell, and otherwise act in a corporate capacity.

an administrative council, and a high assembly. The national Minister of Traffic possesses a right of veto over decisions of the administrative council and the high assembly.

The members of the Center are: ten representatives of the National Railway Association (selected by the national Minister of Traffic); also such other corporate bodies and individual persons as have a particular interest in the work of the National Center for the Development of Travel in Germany, and who are appointed to membership by the national Minister of Traffic after a favorable majority vote of the administrative council. Membership is open to other national and state authorities which assist the organization; and to central associations or other interested groups, the members of which support the organization.

The financial support of the Center consists of sums applied for this purpose by the national Minister of Traffic, contributions from other national and state authorities, and contributions from localities and from such sources as trade, industry, and traffic. The sums applied by the Ministry of Traffic are nearly three-fourths of the profits derived from the Mid-European Travel Bureau.

The German National Railway Association and the "Kraftverkehr Deutschland G. m. b. H.," a corporation composed of seventeen motor omnibus companies, have contracted together to coordinate railway service and motor bus service in specified ways. A central office is established in Berlin, under the joint directorship of an agent of the railway association and an agent of the motor omnibus corporation; there is also an advisory council, the chairman of which is an officer of the German National Association. In order that the railway association may have a direct influence upon the motor omnibus corporation, the latter is pledged to appoint to its board of managers a person selected by the railway association. As a matter of practice the selection of such a board member has been left to the national Ministry of Traffic.

The Commissioner of the German Railways, in the fifth report, June 1, 1927, expressed an unfavorable opinion of the results of this agreement with the motor companies. "On the one hand it was not possible completely to eliminate the competition of certain lines, and on the other hand, on lines jointly operated the remuneration claimed by private companies from the railway for transport effected for the latter was too high. Accordingly the Reichsbahn

has recently appointed a commission in order to examine from the general point of view the attitude which the company is to take towards competition from motor service." The Commissioner also states that the transportation of heavy packages by the Postal Service "means loss of revenue and additional outlay for both concerns and is not in conformity with the general interest of the community as a whole."

The examples will suffice to show the main general types of relationship between the German Railway Association and the accessory enterprises. These enterprises take forms including the stock company, the limited liability association, and the registered association. Relationship with the Motor Omnibus Organization is regulated by a contract which gives the railway association a share in the management of matters of joint concern. With certain other stock companies, such as the European Goods and Baggage Insurance Company, and the Express Company, the National Railway Association has made contracts governing the functions to be performed, but has not secured to itself any share in the management of such companies.

It will be seen that there is no fixed rule for these various relationships; each is worked out especially for the given case. Moreover, it should not be forgotten that in many enterprises accessory to railway travel, such as local refreshment booths, the railway association does not participate at all, either as shareholder or in any managerial capacity, but merely grants privileges and prescribes conditions.

**Administration of Waterways.** Before the adoption of the Constitution of 1919, the Reich had only a legislative and supervisory power over the waterways, which were administered directly by the states. The new Constitution entirely changed this relationship by providing: "It shall be the duty of the Reich to acquire as its own property, and to administer, waterways serving as means of general communication."<sup>63</sup>

Several other constitutional provisions which deal with the administration of waterways may be summarized as follows:

<sup>63</sup> Article 97. For provisions summarized in following paragraph, see Articles 97, 98.



After such acquisition, waterways serving as means of general communication may be constructed or extended only by the Reich or with its consent. In the administration, extension, or new construction of waterways, the requirements of agriculture and of water supply shall be safeguarded, in coöperation with the states. In the acquisition of waterways the Reich acquires the right of expropriation and the rate-making power, as well as police authority over water courses and navigation. Projects of certain improvement associations are to be taken over by the Reich. In accordance with regulations made by the National Cabinet, advisory councils are to be established with the consent of the Reichsrat, to coöperate in matters pertaining to the administration of the national waterways.

By a law of July 18, 1921, a treaty was made with the states which carried into effect the provisions of the Constitution.<sup>64</sup> This treaty provided that the administrative competence of the state central authorities as to the construction, maintenance, operation, and administration of waterways, including the stream and shipping police, as to special powers concerning traffic, and as to the signaling and piloting system, should be transferred to the Reich as from the first of April, 1921. The exercise of rate fixing rights was to belong to the Reich after the same date.<sup>65</sup>

Although the treaty provided for the preservation of certain relationships between the states and the Reich, and also for a limited amount of control and coöperation by the states, in the main the whole waterways system was given over to the administration of the Reich<sup>66</sup> and placed under the administrative direction of the national Minister of Traffic. Under his direction the detailed administration is carried on temporarily through the middle and subordinate authorities at the cost of the Reich,<sup>67</sup> as no special national administrative system has been established in the Reich.

<sup>64</sup> RGBI. 1921 p. 961 ff. with an amendatory law of January 18, 1922, RGBI. p. 222, which made supplementary provisions for Prussia, Hamburg and Bremen.

<sup>65</sup> *Ibid.*, Part III, Section 11.

<sup>66</sup> Section 12 of the above cited treaty contains several provisions to be followed by the Reich in the administration of waterways.

<sup>67</sup> Staatsvertrag, Section 11. A final regulation concerning this administration has not yet been made. To all intents and purposes, references to the national waterways administration apply to the waterways divisions in the Ministry of Traffic.



In the middle—and lower—instances, direct national authorities exist only to a limited extent. To these belongs the administration of the Kaiser-Wilhelm Canal. . . . A superior construction authority and subordinate construction offices were established for the canalization of the Neckar from Mannheim to Plochingen.<sup>68</sup> To finance the construction . . . the Neckar Stock Company was established as a mixed economic enterprise.<sup>69</sup>

The Reich shared in its capital stock to the proportion of 8/15. The other shares were taken up by the states involved and other public corporations, by the banks, the electrical industry, and the wholesale business of Württemberg . . .

The Rhine-Main-Donau Stock Company . . . is also a mixed economic undertaking with the Reich as majority shareholder. . . . The Reich also participates in the Teltow-Canal Stock Company and in the Hapog-Sea-Bath-Service, Ltd., which maintains a steamer service for Hamburg-Cuxhaven, and Heligoland. Moreover, dams are built by stock companies in which the Reich participates. Thus, the Reich owns 20 per cent of the capital stock of the Harz-Dam Stock Company, and, together with the states of Prussia and Brunswick, possesses the majority of shares. . . .

From the outside, the possibility of action of the German waterways administration is curtailed by the limitations which the Versailles Treaty laid upon German inland shipping (Art. 327 ff.). These limitations consist, first, in the fact that the citizens of the allied Powers in all German ports and internal waterways enjoy one-sided advantages. Moreover, the Rhine, the Elbe, the Oder, the Donau and the Memel are international streams; the same holds of the about-to-be-constructed Rhine-Donau Shipping route. The streams are under the administration of international committees. These are as a whole so composed, that Germany is in the minority.<sup>70</sup>

For the purpose of coöperation in matters concerning waterways, district waterways councils and a national waterways council have been established. An ordinance of 1925<sup>71</sup> created eight district waterways councils. The national waterways administration is to keep these councils informed concerning important questions of

<sup>68</sup> RGBl. 1920 pp. 917, 1615.

<sup>69</sup> Supplementary Budget of 1921, aoH., Ch. I, Title 1; Budget of 1922, ord. H., Ch. I, Title 1; aoH., Ch. I, Title 1.

<sup>70</sup> Lassar, Reichseigene Verwaltung, etc. Jahrbuch d. öff. Rechts d. Gegenwart, Bd. 14, 1926, pp. 209-11, 216. Versailles Treaty, Article 344 ff.; RGBl. 1923, II, p. 183; RGBl. 1922 I; p. 287.

<sup>71</sup> RGBl. II, p. 5, in connection with the announcement of January 6, 1925, RGBl. II, p. 515.

administration, construction and maintenance of waterways. They are to be heard particularly in regard to construction, the removal of obstructions, the prevention of floods, affairs involving agriculture and waterways economics, the construction of harbors and the like, the establishment of ferries, the building of bridges, the crossing of streams by high tension wires, police ordinances in respect to shipping, ordinances regarding the use of waterways, shipping taxes, dredging payments and other fees and charges of the Reich, the establishment of the waterways administration, and the business of the international shipping commission.

As a rule, before any decision is taken regarding such matters, there should be a hearing of one of these councils, but if the affair is pressing the standing committee of the council takes the matter into consideration. The councils, within the sphere of their competence, may make independent proposals to the national waterways administration, and may also submit questions to it.

Each district council consists of: the chairman and his representative, who are appointed by the national Minister of Traffic; experts who are representatives of both large and small shipping interests, forwarding concerns, harbors, large shipping agents, trade, industry, agricultural and forestry interests, fisheries, and others particularly concerned, who are appointed by the national Minister of Traffic; and a representative of the railway, who is selected by the head of the directorate of the national Railway Association. For every member a substitute is appointed. The national Minister of Traffic may assign his right of appointing members to subordinate authorities.

The right of nomination of the expert members belongs to unions or economic bodies representing the shipping, forwarding, trade, industry, fishing and other interests, and to harbors or harbor associations, publicly organized economic bodies, such as chambers representing industry, commerce, agriculture, or forestry, public associations which are financially backing an important watercourse of the district, trades unions and similar unions of workers, and consumers. In connection with the law there is a definite plan established showing who have the right of nomination in each district, the number from each kind of association, and the number of members that each proposes.<sup>73</sup>

<sup>73</sup> Section 5; also RGBI. 1925, II, p. 8 ff.

The chairman of the council must call it together annually, or as required. A third of the members may demand that a sitting be held. The orders of the day are communicated to the members and their representatives fourteen days before the sitting, and proposals may be made by the members for additions to the orders of the day, to within seven days before the sitting.

Each district waterways council is authorized to constitute committees from among its members, to which it can assign the preparation of discussions, and also the independent execution of a part of its functions, especially the settlement of urgent affairs. In any case it selects a chief committee, and if there is need for advice upon shipping questions, a shipping committee.

When large building operations are to be undertaken, an especial committee is created, to which the Reich and the states concerned can send experts with voting rights, who do not belong to the district waterways committees. The number of these committee members should fundamentally not be over one-third of the entire number. In this committee each state concerned should be represented by one member.

The second advisory agency to the national waterways administration is the national waterways council. It is to be heard in all very important affairs, in so far as they are significant for the whole national territory or a large part of it. A special duty of this council is to pass upon large one-time expenditures of money for waterways purposes. Within its sphere of competence it can make independent proposals to the national waterways administration, and ask questions.

The national waterways council consists of: the chairman and his substitute, who are appointed by the national President; fifty-four members of the district waterways councils, selected from their midst in accordance with the plan connected with the law;<sup>72</sup> twelve members chosen by the national Minister of Traffic; and a representative of the railways, who is selected by the national Minister of Traffic. As usual, a substitute for each member is provided for.

The national waterways council is called together by the national Minister of Traffic at least once a year, in other cases according to

<sup>72</sup> See Anlage 2, RGBI. 1925, II, p. 16, for the details of this plan.

requirements. The executive committee, or one-third of the members, may demand that a meeting be held.

The council is authorized to appoint committees of its members, to which it may assign the preparation of discussions, and also a part of its functions, especially the settlement of pressing affairs. In any case it must appoint an executive committee. The chairman of the council is a member of all committees.

The members of the council have to represent the entire economic interests of the Reich and the states, in accordance with their free convictions; and are not bound to proposals and instructions of the bodies and associations which have selected them.

From all these arrangements, it is evident that although the administration of waterways is centralized in the Reich, the detailed administration is at present left largely with the states. There is a large degree of decentralization, also, in respect to policy planning, since the district councils have a very strong voice in deciding upon affairs which concern only one district. It is interesting to observe that the advisory planning is largely in the hands of experts from the various economic and social interests depending upon waterways.

The claim is made that a major difficulty in the way of a more unified national administration of the waterways lies in the fact that the states fear that under such an administration great streams and canals would be developed at the expense of smaller waterways of local importance. On the other hand, it is sometimes claimed that trade, industry, and commerce are developing a sentiment in favor of unified administration.<sup>74</sup> Recently, however, the pressure of certain economic groups, the realization of the vast costs which would be involved, and the fear of competition which led the National Railway Association to ask the Minister of Traffic for an opportunity to be consulted and to offer objections before any further canals may be built, have led to retrenchments in the canal construction program.<sup>75</sup>

**Administration of Air Traffic.** Air traffic in Germany is regulated according to the provisions of a law of 1922.<sup>76</sup> This law re-

<sup>74</sup> Lassar, p. 214.

<sup>75</sup> Report No. 5 of the Commissioner for the German Railways, June 1, 1927.

<sup>76</sup> RGBl. 1922, I, p. 618; corrected; pp. 722, 758; amended, RGBl. 1924, I, p. 43.

quires the licensing of operators; the registration of aircraft; and the permission of special authorities or those other authorities specified by them, for the establishment of landing fields. In general the administration of the law is placed under the Ministry of Traffic.<sup>77</sup>

Executory provisions for specified sections of the law are issued by the Cabinet with the consent of the Reichsrat and of a committee of the Reichstag. The same group of authorities issue provisions in respect to flying across national boundaries or tariff boundaries, other provisions necessary for public order and safety as affected by air traffic and business, and provisions for the establishment of an advisory council.

The function of this council<sup>78</sup> is to give advice upon certain specified matters, and in general, upon important questions concerning aviation. The state cabinets, through the mediation of the national Cabinet, may avail themselves of the council.

The Minister of Traffic appoints the chairman of the council and his substitute, from among the officers in the Ministry. Any German who is eligible to the Reichstag may be appointed by the Minister of Traffic to membership on the council, which is an honorary, unpaid position. Committees are selected and their chairmen appointed by the Minister of Traffic, who may also send commissioners or experts to meetings of the council, and have additions made to the orders of the day. The cabinets of the states or the highest national authorities may send commissioners when they are concerned in matters to be discussed. These commissioners may speak in regard to special points on the order of the day, and those sent by the states are especially authorized to make proposals, ask questions, and demand a decision by the council.

Acts of the administrative authorities in carrying out the air traffic law may be contested by the procedure for administrative conflicts, or by the method of recourse given in the ordinance on industry.<sup>79</sup> Appeals against decisions of the national Ministers of Traffic and of the Post in regard to the requiring of commercial aviation companies to carry mail, and the compensation for this service, are to be decided by the national Economic Court.

<sup>77</sup> See Chapter VI.

<sup>78</sup> RGBL. 1924, I, p. 43.

<sup>79</sup> This is the Gewerbeordnung of June 21, 1869, which has been much amended.

The Reich may, according to Section 16 of the law, take over (upon paying compensation) air traffic enterprises, or the property or the rights to the use of grounds, which are employed in forwarding persons or goods by aircraft. The development of air traffic in Germany has been encouraged by subsidies paid to such lines as undertake to keep up a regular traffic in specified courses.<sup>80</sup> "The means are specifically granted for the actual air traffic and for the improvement and further development of aircraft."<sup>81</sup> "There is reason to think that the competition confronting the railway from aviation will tend to increase. Nevertheless the Reichsbahn has made no attempt to check the development of aviation. . . . It has concluded agreements with the Lufthansa (which now operates the whole of the German air system) with a view to coördinating transport by rail and by air."<sup>82</sup>

**Administration of Motor Vehicle Traffic.** Legislation for the purpose of regulating motor vehicle traffic is a function belonging to the Reich rather than the separate states.<sup>83</sup> The numerous laws and ordinances<sup>84</sup> which govern such traffic require registration of vehicles, examination and licensing of operators, and so on. The administration of these provisions is handled locally by the higher administrative authorities of the states. Orders governing specified matters in respect to registering, examining and licensing are issued by the national Minister of Traffic; but any provisions to which the Reichsrat offers objection within a period of one month must be revoked. Special permits for the use of motor vehicles whose structure and equipment do not correspond to the specifications in the official orders (as, for example, racing automobiles) may be given by the consent of the highest state authorities and the national Minister of Traffic.<sup>85</sup> The considerable number of authorities coöperating in the administration of the laws and regulations in this field is augmented by an advisory council.

<sup>80</sup> See the budget of 1924, XI, Ch. 1, Title 79; the same for 1925, XI, Ch. 1, Title 84.

<sup>81</sup> Lassar, *Reichseigene Verwaltung*, etc. *Jahrbuch d. öff. Rechts d. Gegenwart*, 1926, p. 217.

<sup>82</sup> Report of the Commissioner for the German Railways, June 1, 1927.

<sup>83</sup> Constitution, Article 7, No. 19.

<sup>84</sup> See basic law, RGBl. 1909, p. 437; amendments, RGBl. 1923, I, pp. 1, 743; RGBl. 1924, I, pp. 42, 43; executory ordinances and orders, RGBl. 1925, I, p. 439; RMBL. 1925, pp. 1387, 1419; RMBL. 1926, p. 61.

<sup>85</sup> See the ordinance of December 5, 1925, RGBl. I, p. 439, Section 5.

Special provisions are made in regard to international traffic by means of motor vehicles.<sup>86</sup> Licenses for such traffic are issued by the higher administrative authorities of the states; the German consuls in foreign cities assist in this work.

The Reich undertakes not merely the control of motor vehicle traffic, but its support and development. Motor vehicles prepared for use in war have been placed at the disposal of traffic companies in which the Reich, states and localities participate. The Reich has also made considerable loans to these companies.<sup>87</sup>

**The Post, Telegraph, Telephone and Radio.** Before 1871 the post and telegraph system of Germany was divided among the various individual German states. This division of the system was virtually brought to an end in the establishment of the German Constitution of that year, except that Bavaria and Württemberg were conceded special rights. A fully unified system, however, was not brought about until the establishment of the Weimar Constitution in 1919. Article 88 of this Constitution provides that "Posts and telegraphs, including telephones, are exclusively in the hands of the Reich." Article 170 provides that the postal and telegraph services of Bavaria and Württemberg should be taken over by the Reich not later than April 1, 1921. These post and telegraphic administrations were transferred to the Reich by virtue of treaties which went into effect as of April 1, 1920.<sup>88</sup>

The Reich Post Finance Law of March 18, 1924, establishes the national post and telegraph service as an independent business undertaking, under the designation: "The German National Post." This enterprise is to be administered by the National Post Minister with the coöperation of an administrative council. The national property which belongs to the German National Post, property which is acquired by it, and all public and private rights and obligations of the national post and telegraph administration, are to be held separately from the remaining property of the Reich, as the special property of the German National Post. This special property is liable only for the obligations of the National Post, and may

<sup>86</sup> RGBI. 1925, I, p. 453.

<sup>87</sup> See budgets to date; also Lassar, p. 216.

<sup>88</sup> See RGBI. 1920, pp. 643-74 inclusive.



not be made liable for other national contracts or obligations.<sup>89</sup> These provisions do not affect those of international treaties.

The national Post Minister is the chief direct administrative authority in the post administration. In accordance with the decisions of the administrative council, he issues decrees concerning the conditions and fees for the use of the means of communication in his charge. He is responsible to the Reichstag for seeing that the national post is administered according to law, and in correspondence with the demands of communication. The salary of the Post Minister is included in the national budget, and is thus subject to the final determination of the Reichstag and the Reichsrat. The Post Minister must lay before these bodies a business report for each completed fiscal year, showing gains and losses, in such a way that the financial situation of the German national post can be readily ascertained.<sup>90</sup>

The administrative council consists of not more than thirty-one members, appointed by the national President. Seven members each are proposed by the Reichstag and the Reichsrat, and one member by the national Minister of Finance. Seven more members are proposed by the Post Minister, in conference with the Minister of Finance and the Reichsrat, from among the personnel of the German National Post. The remaining members are to possess special knowledge and expertness in regard to economics and traffic. They are proposed by the Post Minister in agreement with the Minister of Finance, after the approval of the Reichsrat. In the selection of the representatives of economics, the size and economic importance of the individual states is to be taken into consideration. Anyone who is eligible to the Reichstag may be appointed to membership in this council, and reappointment is permissible. The members proposed by the Reichstag are excluded after the expiration of the electoral period or the dissolution of the Reichstag. All the other members go out after three years.<sup>91</sup> The council acts through an executive committee.

The Post Minister, or his representative in case of his inability, acts as chairman of the administrative council. The cabinets of the

<sup>89</sup> RGBl. 1924, I, 287, Section 1. Telephones are included under the head of telegraphs and are under the same administration.

<sup>90</sup> Reichspostfinanzgesetz, Section 2.

<sup>91</sup> *Ibid.*, Section 3.



states have the right to send representatives to the sittings of the administrative council, but these do not have the right to vote. They do, however, have the right to take a position in respect to individual points in the order of the day, to make proposals and inquiries, and to cause a decision to be made regarding them. The chairman of the administrative council has to inform the state cabinets of its sittings in due time, by sending them the orders of the day.<sup>92</sup> In this way the state administrations are kept currently informed of affairs which might be of interest to them.

The administrative council passes upon the most important questions regarding the postal administration, including the establishment of the estimates and the discharging of the administration from its financial responsibility, the obtaining of credits, the acceptance of securities and their conditions, the extent of the debt amortization, the fundamental principles for the use of communication facilities, the establishment of postal, telegraph, and telephone charges, the principles regarding the establishment of wage scales, the general provisions regarding the investment and use of postal savings credits and the investment of reserves, and the undertaking of new and the giving up of existing branches of business.<sup>93</sup>

The administrative council is not authorized, however, to undertake an increase of expenditures above the proposals of the Post Minister, despite his opposition. The Cabinet decides, upon the proposal of the Post Minister, whether or not the carrying out of a resolution of the administrative council is justified in the interests of the Reich. The decision of the Cabinet is communicated to the administrative council. It is to be repealed, if the Reichstag and the Reichsrat demand this within three months.<sup>94</sup>

Other duties of the administrative council are, to assist the Post Minister in the conduct of business, and to supervise the observance of the principles established by the law and executory provisions. To this end, it is to be heard in an advisory capacity in regard to all important questions of administration. At any time, upon demand, it is to be informed as to the financial condition of the postal service; and it is to receive a monthly report covering income and expenditures.<sup>95</sup>

<sup>92</sup> *Ibid.*, Section 5.

<sup>93</sup> *Ibid.*, Section 6.

The expenditures of the German National Post, as well as the interest and the amortization of the debts, are to be covered by the income. No additional sums are to be granted out of the national treasury. Credits can only be used for the strengthening of the business property; and the interest and amortization must be guaranteed from operating income. A reserve against deficits must be laid aside.<sup>94</sup>

The principles of accounting to be employed by the German National Post are determined by the Cabinet, after a hearing of the administrative council. These principles must be in harmony with the provisions of the Post Finance Law and the Budget Law; and the accounting is to be so arranged that a systematic annual report of profit and loss may be prepared.<sup>95</sup>

The raising of credits, the giving of securities, and the acceptance of securities, require a previous agreement between the Post Minister and the Minister of Finance. Unless in case of special legal regulation, the debts of the German National Post are administered like other national debts by the national debt administration.<sup>96</sup> The powers in this connection which belong to the Minister of Finance, are to be exercised jointly by him and the Post Minister. These two ministers were given the power to decide jointly on the amount of the debt to be taken over on April 1, 1924, by the German National Post. To this will be added any other debts contracted later for purposes of the postal, telegraph, and telephone business.<sup>97</sup>

The national Post Minister lays before the Court of Audit the annual accounts, as well as the statement of profit and loss. The Court of Audit, after examination, transmits the accounts to the administrative council, which makes the decision regarding the discharge. The Post Minister has to make an especial examination with the Court of Audit, which must correspond to the requirements of an expert examination. In cases of difference of opinion between the Court of Audit and the German National Post, the national Cabinet decides.<sup>98</sup>

<sup>94</sup> *Ibid.*, Sections 7 and 8.

<sup>95</sup> *Ibid.*, Section 7.

<sup>96</sup> See Chapter VIII.

<sup>97</sup> Reichspostfinanzgesetz, Sections 9 and 10.

<sup>98</sup> *Ibid.*, Section 11.

The officers of the German National Post are national officers with the rights and duties provided for by Article 129 of the national Constitution; namely, life appointment, pension claims, rights in respect to transfer, opportunities for making complaints, and so on. The salaries of these officers must correspond to those of other national officers, and more favorable salaries or rules and regulations can be established only in order to insure a more productive operation, or when the advantages seem to outweigh the disadvantages from other viewpoints. New provisions regarding salaries (except national laws or provisions which reproduce national legal regulations) are to be communicated to the Minister of Finance, who may enter an objection.<sup>90</sup>

The use of the radio is also under the control of the national Post Administration. Broadcasting or receiving establishments of every sort, which are used to communicate or to receive information, signs, pictures, or sounds by wireless, may be established or operated only with the consent of the national telegraphic (now the German National Post) administration.<sup>1</sup>

This brief examination of the postal system of the Reich shows that from the viewpoint of organization and administration, the National Post is an integral part of the national administrative system. From a financial viewpoint, however, it is conducted as a separate undertaking paying its own way and responsible for its own assets and liabilities. Nevertheless it is under the national accounting control, and its financial administration is in part subject to the national Minister of Finance.

The organization of the postal administration, while corresponding quite closely to the organization of an ordinary corporation with a president and a board of directors, displays several noteworthy differences. In the first place, the officer who stands at its head, the Post Minister, is at the same time a member of the chief national administrative authority, the Cabinet. As such his plans are to a certain extent under the control of the Cabinet, and he himself is responsible to the Reichstag. Again, the administrative council, instead of being composed of stockholders as in the ordinary corporation, is chosen in such way as to represent the

<sup>90</sup> *Ibid.*, Section 12.

<sup>1</sup> Verordnung zum Schutz des Funkverkehrs of March 8, 1924, RGBl. I, 273.

viewpoints of the Cabinet and of the economic interests which use the postal and telegraph services, as well as that of the technical expert. This plan is devised to make the communication services as useful as possible to the great economic enterprises, and to make the business a self-supporting one, while yet safeguarding the interests of the nation as a whole. It must be kept in mind, however, that the functions of the administrative council do not end with the purely negative one of preventing injury to public interests. On the contrary, the council acts as an advisory board in respect to the administration of the business, and passes on important questions of policy.

Although the states, as such, have no representatives on the administrative council, their ability to send representatives of their cabinets to participate in the sittings of the administrative council, means that their particular interests will be considered.

**Administration of Coal, Potash, Iron, and Electricity.** Article 156 of the National Constitution provides:

The Reich may by law, without prejudicing the right of compensation, and with due application of the provisions in force with regard to expropriation, transfer to public ownership private economic enterprises suitable for socialization. The Reich itself may participate or may cause the states or municipalities to share in the management of economic enterprises and associations, or may in any other manner assure to itself a determining influence therein.

Moreover, in case of pressing need, the Reich may, in the interest of collectivism, combine by law on a basis of administrative autonomy, economic enterprises and associations, in order to secure the coöperation of all human elements of production, to give employers and employees a share in management, and to regulate the manufacture, production, distribution, use and prices, as well as the import and export, of economic goods upon principles of social economy.

Acting under this broad authorization, the Reich has established the coal, potash, and iron business upon a basis that may be called compulsory self-administration with national supervision, and has passed a law for the socialization of the electrical business, which, however, has as yet not been fully carried out.

**Fuel Administration.** A law for the regulation of coal economy was passed on March 23, 1919,<sup>2</sup> and the Cabinet issued the execu-

<sup>2</sup> RGBI. 1919, p. 342.

tory provisions on August 21, 1919.<sup>\*</sup> This law applies to hard coal, soft coal, pressed coal, and coke secured from coal.

The coal producing areas are divided into eleven districts, partly on a geographical and partly on a geological basis. Every coal mine is placed in a particular district. The operators of the coal mines of each district are required to form themselves into a coal syndicate, which must be joined also, upon the demand of the National Coal Union, by every owner of an independent coal establishment, pressed coal manufactory, and other similar establishment.

*Organization and Functions of the Administrative Authorities.* Each coal syndicate must have a supervisory council, which is composed partly of workers and partly of employers.

The coal syndicates, the coal gas syndicates, and the German states which as owners of coal mines belong to syndicates, are compelled to form themselves into a union called the Reichskohlenverband, or the National Coal Union. The supervisory council of this organization must include three members representing the workers, one representing the employers, and one from among the consumers.

The most important of the administrative authorities in the coal administration is the National Coal Council, with its committees of experts. The council consists of sixty members, who represent various interests, such as states, mines, gas plants, technical mining employees, coal dealers, coal using industries, workers, representatives of railways, shipping, and so on.

The National Coal Council meets as often as may be necessary, but must be called together at least once a year. It may constitute committees from among its members, and may assign to them the independent settlement of certain affairs. It establishes three expert committees, the technical expert committee for coal mines, the technical expert committee for fuel application, and the expert committee on social policies. All members of the National Coal Council are authorized to attend the sittings of the expert committees and take part in the discussions.

In general the function of the coal administration is to regulate production, secure the just treatment of the laborer and the con-

<sup>\*</sup> RGB. 1919, p. 1449. See also provisions of October 13 and 18, 1923, RGBI. I, 945, 979.

sumer, prevent economic waste, and enable the country to compete in the world markets on an effective basis. This is secured through the regulation of output, control over the use and marketing of coal, and control of prices.

The National Coal Council, as the chief policy determining authority, directs the entire fuel economy in accordance with the principles of social economy, under the superior supervision of the Reich. Its consent is necessary to the contracts of the National Coal Union and of the syndicates. It has the right to outline general policies in respect to fuel economics, especially for the elimination of non-economic competition and for the protection of consumers. It makes provisions regarding the use and delivery of coal. It supervises the coöperation between the National Coal Union and the expert committees. In order to obtain its ends it is given wide powers of securing information. Governmental authorities and self-administering authorities are required to give it official aid.

The expert committees of the National Coal Council make investigations and publish their results, they make proposals to the National Coal Council, carry on affairs assigned to them by the National Coal Council, prepare affairs for the discussion of the National Coal Council, and act in a general advisory capacity.

The National Coal Union oversees the execution of the general lines of policy and decisions laid down by the National Coal Council, and issues executory measures for this purpose. It supervises the obligations placed upon the syndicates regarding the demand, "self use" and non-production of fuels. It establishes principles for decisions regarding the rights of "self use" of fuel. It can limit the sale of individual syndicates both in respect to territory and quantity, and approve the general conditions of delivery of the syndicate. It determines upon and publishes the price of fuel, taking into consideration the proposals of the syndicates and the interests of the users. It gives general principles regarding price reductions. It is competent for questions of import and export. It is authorized to look into the accounts and papers of its members and to demand documents and information. Before giving orders it has to hear the expert committee competent for the particular affair under discussion.

The coal syndicates supervise the execution of general lines of policy, the orders and decisions of the National Coal Council, and

the National Coal Union; and regulate the demand, use, and production or non-production of fuels by their members. They determine upon the "self-consumption" of members, they establish the quotas which their members may use and the amount to be sold, and give authorization for the transfer of the part to be sold. They sell the fuel given over to them, establish general conditions of delivery, and supervise the execution of these conditions. They make proposals to the National Coal Union concerning the price of fuel and the general policy in respect to price reductions.

In order to prevent the authorities from unduly injuring individuals or individual concerns by acting in an arbitrary way, the possibility of objection is given. A right of objection against the measures of the syndicate lies ordinarily to the National Coal Union. Against this decision a further appeal lies to the National Coal Council. The ordinary legal remedies are excluded, so that those injured must depend entirely upon the methods of redress found in the law governing fuel economics.

*Government Participation in Fuel Regulation.* Although the fuel situation is handled largely through the compulsorily self-governing fuel administrative authorities, this does not prevent the governments, national, state, and local, from exercising a measure of control.

According to the executory provisions making the law effective, the Reich has a superior supervision over fuel economics, which is exercised by the national Minister of Economics.\* He can demand from the National Coal Council, the expert committees, the National Coal Union, the syndicates, owners, dealers and users, information regarding fuel. He is authorized to participate in all discussions of the National Coal Council, the expert committees, the Coal Union, and the syndicates or their organs, through commissioners or representatives. Such representatives may object to the decisions of these organs, on the ground that they have overstepped their powers, have broken the laws or have performed acts contrary to the public welfare. An objection has the effect of delay. The national Minister of Economics must give his decision regarding the matter finally within two weeks, otherwise the objection is of no further force. General orders of the National Coal

\* Section 110.



Council for the limitation of the import of coal from foreign countries require the consent of the national Minister of Economics. He can set aside the price established by the National Coal Union without a preliminary hearing of the National Coal Council and the National Coal Union.<sup>5</sup> Upon the proposal of a state he has to hear the National Coal Council in regard to the raising of prices. After a hearing of the states, he can create authorities through which the fuel users may be formed into districts in order to formulate in a unified way their wishes and proposals, and through which can be established fundamental regulations governing the selling price of fuel. With the consent of the national Minister of Economics, the states may themselves establish such authorities.

The costs incurred by the Reich in the regulation of fuel are borne to the extent of 200,000 marks by the National Coal Union.

The states, represented through the Reichsrat committees for trade and commerce, are authorized to participate in the discussions of the National Coal Council and in the plenary sessions of the expert committees without the right of vote.

The tax authorities are authorized to demand information regarding fuel from the National Coal Council, the expert committees, the National Coal Union, and the syndicates.

The communes and communal associations with at least 10,000 inhabitants, and other communes or communal associations, after a hearing of the representatives of the coal dealers and coal users, are authorized, under the fundamental regulations established by the National Coal Union, to establish local retail prices. Their power stops, however, where prices have been established by the state-created authorities.

It can be readily seen from this brief study of national coal regulation, that the bodies here created are not merely bodies representing the interests of the coal producers or dealers, but are semi-public bodies, which have direct responsibilities to the state. The attempt is here made through compulsory self-regulation (a) to guard the interests of the nation as a whole in respect to man power, saving of cross freight rates, uneconomical production, injurious foreign competition, and other detrimental factors; (b) to adjust the relationships between employers and employees through a joint

<sup>5</sup> Section 112, as amended by RGB1. 1923, I, 945.



participation in policy; (c) to guard the interests of consumers through a joint control of the industry with the producers, distributors and laborers.

It is claimed that the arrangement, as regards capital and labor, is quite satisfactory, since it has to a very large extent prevented the old system of unrestricted output and competition, with low prices and periodical crises. The same cannot be said in respect to the coal dealers and users. It is claimed that there is a tendency of the syndicates to restrict the freedom of the middleman, or even to exclude him altogether. It is further claimed that the stabilization of the industry has taken place at the expense of the consumers.<sup>6</sup>

**Potash Administration.** The present law governing potash<sup>7</sup> did away with many of the old provisions governing this industry, and placed it upon a compulsory self-governing basis. The detailed executory provisions are found in an ordinance issued by the Cabinet on July 18, 1919.<sup>8</sup>

The potash industry is now regulated through several different sets of authorities, supervisory, controlling, administering, and expert. At the head of this self-governing industry stands the National Potash Council, a body of thirty members composed of five representatives of potash producers, three representatives of the states, eight representatives of the potash mine workers and manufacturing employees, three representatives of the potash syndicate, one representative of the technical employees of potash works, one representative of the employees of sellers of potash, four representatives of the agricultural consumers who are not potash works proprietors, two representatives of potash dealers, one representative of the entrepreneurs and one of the workers from the potash manufacturing chemical industries, and one expert each for potash mining, manufacturing and research. The council thus represents producers, manufacturers, agricultural consumers, and workers and employees from the various potash industries.<sup>9</sup>

<sup>6</sup> See U. S. Bureau of Foreign and Domestic Commerce, Special Circular No. 383—Minerals section.

<sup>7</sup> July 19, 1919, RGBI. p. 661 ff.

<sup>8</sup> RGBI. 1919, p. 663 ff.; RGBI. 1921, pp. 824, 1312; RGBI. 1923, II, p. 229; RGBI. 1924, II, pp. 44, 155; RGBI. 1925, II, p. 1159. The citations are to the general executory provisions, RGBI. 1919, p. 663, unless otherwise indicated.

<sup>9</sup> Sections 2, 3, and 4.

These representatives are selected in various ways.

The second set of authorities established by the National Potash council are :

1. The potash examining office and the potash appeal office.
2. The potash wage examining office of first and second instance.
3. The agricultural-technical office.<sup>10</sup>

The potash examining office consists of a chairman and eight members. The chairman and his substitute are appointed by the national Minister of Economics. They may neither be shareholders of potash works nor belong to the administration of a private potash works.<sup>11</sup> The other members, who are elected by the groups of members of the National Potash Council, include two members chosen by the representatives of the potash producers, two members who represent the states and are chosen from the highest mining officers of the states, and four members (some of whom must be actively engaged in potash mining) who represent the workers.

The potash appeal office consists of a chairman and six members. The chairman and his representative are appointed by the national Minister of Economics, and the members are elected by the National Potash Council. Two of the members must be chosen from among the highest mining officers, one must have a judicial, and another must have a geological training. Neither the chairman nor the members may hold shares in potash works, be concerned with the profits, or belong to the administration or the supervisory council of any potash works. Eligibility is not dependent upon membership in the National Potash Council.

The potash wage examining office of the first and second instance controls salary and wage regulations (though under certain conditions the potash examining office operates as the potash wage examining office of the first instance). Four members of this office represent the workers ; four members are elected by the National Potash Council from the employers in the potash industry or its special branches, the National Potash Council, the potash office, or the potash syndicate.

The potash salary appeal office consists of the chairman and six members. The members are elected by the National Potash Coun-

<sup>10</sup> Section 16.

<sup>11</sup> Sections 17, 18.

cil. They are selected from both potash producers and workers employed in the potash mining or manufacturing business. In the examination of the salary relationships of employees (as distinguished from workers), instead of the three workers there are three employees elected by the National Potash Council from the employees of potash mines, manufacturing plants, the potash office, or the potash syndicate office.

The agricultural technical office consists of a chairman and twelve members. The members who are elected by the National Potash Council include five practical farmers, one agricultural high school teacher and one director of an agricultural experiment station, three representatives of the potash syndicate, one representative of the potash dealers, and one representative of the workers. The proposals for these positions are made by various associations, in lists which contain a number of names double that of the number of persons to be elected.

The potash producers, who include not only mine owners but also manufacturers of potash and potash products, are required to form themselves into a potash syndicate. The potash syndicate must be a juristic person, subject in a general way to the provisions governing corporations.

The potash syndicate must have a board of managers to which among others there must belong four persons, of whom two are proposed to the National Potash Council by the representatives of the workers, one by the representatives of the employers, and one by the representatives of the consumers. The board of managers is given the competence that belongs to the board of managers of a private corporation, such as the general direction of business, demanding of reports, investigation of books and accounts, the right to make a yearly accounting, lay aside reserves, and divide the profits.<sup>12</sup> The corporation charter of the potash syndicate requires the consent of the National Potash Council. It or any changes in it must be published in the National Advertiser.

The administrative costs of the National Potash Council, as well as the costs of the potash offices, are borne by the potash syndicate. The National Potash Council makes a yearly estimate regarding the costs, which after it has been approved by the national Minister of

<sup>12</sup> Section 44. See also Handelsgesetzbuch, Section 246.

Economics, is voted by the potash syndicate. This makes the payment obligatory upon the potash syndicate.<sup>13</sup>

*Economic Activities of the Potash Authorities.* The National Potash Council, under the supervision of the Reich, conducts the potash industry as governed by law, in accordance with the principles of public economy. It approves the corporation charter of the potash syndicate and the rules of business of the potash offices, and lays down general principles governing potash economy, especially for the increase of domestic production and the promotion of agriculture. Upon the proposal of the potash examining office or the potash appeal office, it may order the payment of compensation and the closing down of particular manufactories. Upon reasoned proposals of the potash syndicate it has the right to establish the sale price for domestic purchasers, according to which the dealers of the potash syndicate, the representatives of agricultural unions and of chemical industries using potash and potash products, and wholesalers dealing in potash have to proceed. It can make price reductions for large purchases, for cash payments, or for those furthering potash sales. The law permits potash consumers to join together for the purpose of obtaining price reductions. For like consumers, however, the reductions must be the same. The Council makes provisions regarding freight adjustments and freight equalization for domestic consignees.<sup>14</sup> In case of doubt it decides whether a product of the potash industry falls within the provisions of the potash law.<sup>15</sup> It makes provision for the securing of an average wage for the workers and employees of the potash industry.<sup>16</sup> It can determine to what workers and employees its authorizations as to safety and average wage are applicable. It has wide powers in securing information.<sup>17</sup>

The potash examining office establishes the relationship of the share of individual producers or manufacturers to the entire sale. It oversees the execution of provisions regarding prices, price reductions, freight adjustments, classifications, average wage, and the like, made by the National Potash Council.

<sup>13</sup> Section 50.

<sup>14</sup> Sections 57-58.

<sup>15</sup> Section 59.

<sup>16</sup> Section 60.

<sup>17</sup> Sections 61-62.

Large powers of securing information on which to act are bestowed upon it. For this latter function it has powers to summon witnesses, to administer oaths, and to secure the assistance of the courts.<sup>18</sup>

Against the provisions enacted and the decisions made by the potash examining office, an appeal is permissible to the potash appellate office, within a month after the decision is made.<sup>19</sup> Legal remedies, other than those given in the potash law, are not available.

The potash salary inspection office is charged with the execution of the provisions laid down by the National Potash Council for the guaranteeing of the average wage of workers and salary of employees. It decides in the first instance whether the legal provisions have been observed. Appeal to the potash salary inspection office of the second instance is permissible.<sup>20</sup> In order to facilitate its work, this office is authorized to demand information regarding working time and salary relationships, from employers to whose workers and employees the provisions of the national potash office in respect to salaries and wages apply.<sup>21</sup>

The potash syndicate raises the amounts necessary for domestic advertising, while the National Potash Council establishes the minimum yearly contributions for that purpose. The agricultural technical office makes proposals in respect to the proportionate contributions, which may be adopted by the National Council; the office determines finally as to the application of such contributions. The advertising is carried out through agricultural authorities and bodies. The agricultural technical office must also handle problems concerning domestic agriculture which are assigned to it by the National Potash Council.

Not only must the members of the potash syndicate give the products manufactured or produced by them to the syndicate for disposal, but the syndicate is exclusively authorized to sell and dispose of these potash salts and combinations.<sup>22</sup> The importation of potash salts, products and combinations from abroad belongs exclusively to the syndicate. The syndicate regulates the sales upon

<sup>18</sup> RGBL. 1921, p. 824, as an amendment to Section 67.

<sup>19</sup> Section 68 as amended by RGBL. 1921, p. 824.

<sup>20</sup> Section 69.

<sup>21</sup> Section 70, as amended by RGBL. 1921, p. 1313.

<sup>22</sup> Section 74.

the ground of share quotas, which are fixed according to capacity and condition of the potash producer, and ability to deliver.

*National and State Control Over the Industry.* The Reich has a superior supervision over the potash industry, which is exercised by the national Minister of Economics.<sup>23</sup> He can demand information from all concerned in the potash industry; he is authorized to participate (through a commissioner) in the deliberations of the National Potash Council, the potash offices and the committees, as well as in the sittings of the supervisory council and the general meetings of the potash syndicate. The commissioner may object to the decisions of these authorities on the ground that they are overreaching their powers, or are acting contrary to law or public welfare. This has the effect of delaying further action until the final decision of the Minister. No objection, however, may be made by him to the decisions of the potash examining office, the potash appeal office, and the potash wage examining office.<sup>24</sup> The national Minister of Economics is authorized to lower the domestic sale price established by the National Potash Council, after a hearing of the Council and the potash syndicate. He may also make exceptions to the provisions of the law that the price for sale and delivery by the potash syndicate to foreign countries may not be less than the domestic price. He is authorized to make executory provisions to the potash regulations established by the Reichsrat,<sup>25</sup> upon demand by the proper authorities.<sup>26</sup>

The states are authorized to participate in a representative and consultative way through the committee of the Reichsrat for trade and commerce,<sup>27</sup> or through special representatives, in the discussions of the National Potash Council. The Council must invite the committee to its sittings.<sup>28</sup>

As in the coal industry, there is here an attempt to eliminate the evils of free competition, such as overproduction, "cut-throat competition" and waste of natural resources; to adjust the relation-

<sup>23</sup> Section 89.

<sup>24</sup> Section 91.

<sup>25</sup> Sections 92 and 1, No. 4.

<sup>26</sup> Section 92.

<sup>27</sup> As this law was passed before the adoption of the present Constitution, the states committee is specified. According to Article 179 of the Constitution, the Reichsrat takes over all powers of the states committee.

<sup>28</sup> Section 94.

ships between capital and labor; to ensure consumers a reasonable price; and to prevent "dumping." This is accomplished through the forced coöperation of all the interests concerned in the industry, working through a hierarchy of authorities, the chief of which is largely policy determining in nature, while the others are largely executive or expert and advisory.

**The Iron Industry.** The iron industry is managed by a self-administering body created by national ordinance and possessing a legal personality. This body, which is located at Düsseldorf, is called the Iron Industrial Union.<sup>29</sup> The ordinance lays down in considerable detail the iron products which are included within its provisions.

The Iron Industrial Union is constituted of representatives of producers, dealers, and consumers.

The Union has the following organs: The full assembly, the work committees, and the manager.

The full assembly consists of seventy members, thirty-four representing producers, twelve representing dealers, and twenty-four representing consumers. In these groups employers and workers are to be represented in like number. The members are chosen from many different interests within the three main classes, various groups having different numbers of representatives.<sup>30</sup>

The Iron Industrial Union establishes for itself an order of business which requires the consent of the national Minister of Economics.<sup>31</sup>

The full assembly constitutes working committees according to requirements. The ordinance specifies that there shall be established:

- A committee for the regulation of domestic commerce in iron, certain iron ores and scrap iron;
- A committee for the regulation of domestic commerce in steel and rolling mill products;

<sup>29</sup> RGBI. 1920, p. 435 ff.; hereafter cited as VEW. (Verordnung zur Regelung der Eisenwirtschaft).

<sup>30</sup> For a list of these representatives, see VEW. Section 5, and amendments RGBI. 1922, II, p. 104; RGBI. 1921, p. 1588-89.

<sup>31</sup> Section 6.



A foreign trade committee for the regulation of imports and exports of products falling within the scope of the act; <sup>32</sup> to which committees are joined the central offices for import and export of these products; and

For the import of partly manufactured products and rolling mill products from the Saar Territory and Lorraine, there is to be constituted a subordinate committee, in which two-thirds of the votes belong to southern Germany.<sup>32</sup> Members of the working committees need not be members of the assembly. Each of the three groups of producers, dealers, and consumers must be represented in the working committees; none of the three groups may have a majority. In each working committee there must be the same number of representatives of employers and employees. With the consent of the employees, however, the full assembly may diminish the number of employees in the working committees to three.<sup>33</sup>

The manager is elected by the full assembly upon the proposal of the producing employers. One or more persons may be chosen to act as his representative. The first representative of the manager is to be elected upon the proposal of the producing employees. The manager and his representatives are the legal representatives of the Iron Industrial Union.<sup>34</sup>

The full assembly of the Iron Industrial Union directs the iron industry, including export and import, according to the principles of the general economic interest, under the superior supervision of the Reich and in accordance with the provisions of the governing ordinance. It outlines general policies, which are to be carried out by the working committees and the manager. It oversees the working committees and the manager and can demand reports from them at any time.

The working committees manage affairs involving technical and expert questions, and make decisions within the scope of the plans established by the full assembly. They may demand reports from the manager at any time.<sup>35</sup>

The manager has to carry out in detail the general policies and the decisions of the full assembly and the working committees.<sup>36</sup>

<sup>32</sup> Section 7.

<sup>33</sup> Section 8.

<sup>34</sup> Section 9.

<sup>35</sup> Section 10.

<sup>36</sup> Section 19.



All domestic plants which produce the iron products enumerated in the law, except scrap iron, are required to place at the disposal of the Iron Industrial Union a portion of their products, the amount to be specified by the Union, for the purpose of meeting pressing domestic needs, before wholly or partially meeting their other obligations to deliver, and before meeting their own requirements for the production of the products named in the law. The national Minister of Economics, after an understanding with the Union, fixes the quantity of each of these products and specifies the uses which may be considered as pressing needs. In case this understanding does not take place, the Minister decides with the consent of the Reichsrat, after a hearing of the National Economic Council or one of its committees.<sup>37</sup>

For the execution of these duties, all works are to establish delivery associations for the individual iron products, under regulations made by the Union. The competent working committee regulates the conditions of delivery, which are to be carried out by the delivery association. The delivery association determines upon the delivery duties of individual works.<sup>38</sup>

The Iron Industrial Union regulates the price and selling conditions of the iron products (except scrap iron) listed in the law as for domestic sale.<sup>39</sup> The national Minister of Economics can provide that the domestic price must be established uniformly for the Reich territory and that this price may also be valid for the sale to the manufacturer of exported products.

For each of the products named in the act, the Minister of Economics, after a hearing of the Union and under other conditions laid down in the ordinance, may establish the highest quantity that may be exported.<sup>40</sup> He makes regulations regarding the export of iron products, in order to make possible the covering of the exchange requirements of the iron and steel industry for Swedish ore or other foreign raw materials or products, and a partial equalization for the higher cost in the use of foreign ores; <sup>40</sup> and other regulations regarding the import of scrap iron, raw iron, steel, and roll-

<sup>37</sup> Sections 11 and 2, last paragraph.

<sup>38</sup> Section 11.

<sup>39</sup> Section 12.

<sup>40</sup> Section 13.

ing mill products.<sup>41</sup> Before issuing these regulations he must consult or hear the Union.

The Union is authorized to collect fees from the iron and steel producing industries, and from dealers in these products, as well as fees for the conferring of grants for import and export, in order to cover the costs of administration, including the expenses of the commissioner sent by the Minister of Economics. The amount of these fees is fixed in the full assembly. It may, however, assign this power to committees.<sup>42</sup>

The Iron Industrial Union and the commissioner assigned to it by the Minister of Economics are authorized to demand from the producers, as well as from the dealers and users, information concerning the relationships of the iron industry.<sup>43</sup>

Over and above the Iron Industrial Union stands the Reich as a supervisory authority. The manager of the Union must give the national commissioner information and supporting documents regarding the business operations of the Union. Upon the demand of the Minister of Economics, the organs of the Union are to be called together for a sitting. Insofar as the functions provided for in the ordinance and the executory provisions are not fulfilled by the Union, its organs or the delivery associations, the Minister of Economics may commission another office with their execution.

The Minister of Economics has the right to object through his commissioner to resolutions and elections which in his view endanger the public interest. This delays the application of the measure affected. If an understanding does not take place between the Minister and the Union within ten days, the Minister decides conclusively after a hearing of the National Economic Council or its competent committee.

After the taking of votes in the full assembly and in the working committees, a minority which in the full assembly must include at least six votes, in the working committees the majority of those present of one group of representatives, has the right of appeal to the Minister of Economics. Here also the Minister decides conclusively after a hearing of the National Economic Council or its competent committee.<sup>44</sup>

<sup>41</sup> Section 14.

<sup>42</sup> Section 17.

<sup>43</sup> Section 18; also RGBl. 1917, p. 604.

<sup>44</sup> Section 19.

**The Administration of Electricity.** A law of December 31, 1919,<sup>45</sup> provided for the socialization of the electrical industry, the districting of the national territory into electrical districts, and the taking over of private undertakings by the Reich, states and communities. The law further specified that more detailed provisions were to be made by a law to be introduced before April 1, 1921. These detailed provisions have never been made, and the law itself has not been carried into effect. This is probably due to the fact that there are already a great many small communal and state plants and relatively few private undertakings, and also to a feeling that except for production of high voltage currents the electrical industry is largely local in nature, centering around certain large coal fields and water-power stations. Since the war, however, there has been an enormous increase in electrical production; and although the law has not gone into effect, there has been a rapid development in public operation of electrical industries. As a result, approximately 82 per cent of the electrical business is now either wholly or partly under public control.<sup>46</sup>

This ownership and control assumes several forms, not only as to the divisions of government undertaking it, but also in respect to the kind of electrical business undertaken and the method by which the public participates in the industry.

There seems to be a growing tendency for the Reich and the states to produce the electrical current and sell it wholesale, rather than to try to distribute it to the small consumer. Thus the Elektrowerke stock company, one of the largest of all producing companies, whose stock is entirely owned by the Reich, sells current at wholesale only. In a great many instances the smaller private, mixed, or public enterprises of various sorts are connected in with the state or national network of high power production plants, receiving either a part or all of their current from these larger undertakings.

The public participation in the industry takes the form of actual ownership and management of producing or distributing plants, which is the usual form in the smaller divisions of government; partial ownership, regulation, and control of quasi-private com-

<sup>45</sup> RGBI. 1920, p. 19.

<sup>46</sup> Statistik für das Jahr 1925, Vereinigung der Elektrizitätswerke, p. 2, *et passim*.

panies; or a share in the "mixed economic enterprises," in which both public and private capital are enlisted." A trend may be observed toward an interlocking of electrical concerns through stock ownership and participation in management by the various political units.

It will thus be seen that while the electrical industry is largely under public control, it is in a period of transition and adjustment, with a tendency toward concentration of production in large public or semi-public enterprises, but decentralization in the operation of distributing agencies. The vast program of electrification on which the Reichsbahn is now entering cannot fail to give a considerable impetus to the development of the electrical industry.

**Summary and Conclusions.** From our rapid survey several facts stand out in bold relief. The first of these is, that in Germany public utilities are largely under government ownership and control. This is true of railways, canals, waterways, the post, telegraph, telephone, electricity, local waterworks, and other enterprises.

The second noteworthy fact is that a great part of this public ownership and control is centered in the Reich, despite the fact that both states and localities are also participants. It is interesting to observe that motor-vehicle traffic, airship traffic, and the use of radios are regulated by the Reich rather than by the states. It has been pointed out elsewhere,<sup>47</sup> that a special officer in the national Ministry of Economics is charged with the duty of regulating the production, distribution and use of electricity, gas, steam, and water supply, with particular reference to economy of coal.

In the third place, it must be noted that the enterprises wholly or partially owned, managed, or controlled by the public are not by any means confined to such as are called in the United States public utilities, or businesses affected with a public interest. The comprehensive language of Article 156 of the Constitution has made it possible for the Reich to bring the coal, iron, and potash industries under its control to such an extent that their management is now quasi-public. The states and localities are also interested in enterprises of many different kinds.

<sup>47</sup> *Ibid.*

<sup>48</sup> Chapter VI.

A fourth important feature of public ownership and control in Germany is the great variety of the methods employed. No such control over economic enterprises, or participation in them by the government, would be possible in the United States, not merely because such a choice of methods is wanting, but because the national government here possesses no such powers as does the Reich, while even the state constitutions limit quite narrowly state or local relations to economic undertakings. The actual selection of methods in Germany has of course depended in part upon the nature of the enterprise and in part upon economic and political policy and necessity. The railways display the interesting combination of government ownership with private management. In the case of potash, iron, and coal, there is a great degree of public and quasi-public control, to such an extent that the businesses themselves may be said to be quasi-public, yet the public does not own the enterprises. The posts, telegraphs, and telephones are operated on the lines of complete national ownership and management. The waterways, while owned and controlled by the Reich, are administered by the states; and certain great development projects connected with them are financed by mixed economic enterprises. The electrical industry, possibly more than any other, shows a very great diversity in ownership, management, and control; since every kind of governmental unit, as well as private companies, and various combinations of public and private organizations, own and operate electrical plants. In some cases the governmental units may act as shareholders, having interests in the undertakings but not directly intervening in the management.

Perhaps the most interesting fact of all is the tendency in present day Germany to regulate businesses which are not actually taken over by the public, as controlled monopolies. This is in direct contrast to the doctrine of regulated competition, which prevails in the United States. Much of the economic theory lying back of the German organization is set forth in the laws dealing with the various industries. Those laws which govern the coal, iron, and potash industries, for example, show that a serious attempt is being made to do away with the evils of overproduction, wasteful exploitation, cross freights, over-manning of the industries, and exploitation of workers and consumers, by the establishment of a system of unified and monopolistic compulsory self-administration under superior

national control, through administrative machinery in which all interests participate. To what extent this attempt may succeed, and what its effects may be on the general social welfare, no one can decide until it shall have been tested over a period of years. Nevertheless, it deserves the serious attention of students of government in this country, where the exploitation and waste of such natural resources as coal, petroleum, and natural gas have long been causing increasing uneasiness on the part of the public, and where the economic wastefulness of certain aspects of competition, and the possible governmental remedies, are now the subjects of much discussion.

Another way in which German practice has departed from that of the United States is in the type of controlling agencies established. No special governmental agency, lying outside the administrative departments on the one hand and the business itself on the other, such as the Interstate Commerce Commission or the state regulatory bodies for public utilities, is charged with the functions of regulation and control. The ordinary administrative agencies of the government, such as the entire Cabinet or some Minister whose departmental functions naturally link up with certain economic enterprises, are given a superior control; while further control may be assured to the Reich or to other public units by ownership of stock and participation in management, or representation upon the directorate. If the nature of the business indicates the advisability of special representation of various social and economic interests, these may be allowed to select persons to serve on a large board which elects the directorate, or to act in an advisory capacity, or otherwise to represent the point of view of the interested groups which choose them.

This administrative machinery, flexible and adaptable as it is, and varying as it does from case to case, may nevertheless be described in general terms. It is a type of organization which seeks to provide advisory and expert authorities to assist the direct managers of enterprises whose size or importance makes it appear expedient to bring them more or less under public control; to exercise much of this control from within, frequently by stock ownership and representation in the directorate; and to give the highest public administrative agencies some degree of authority over every such enterprise.

One particular result of this type of organization should be observed. The fact that the Cabinet or some Minister possesses a certain degree of control over every business in which the Reich is financially interested, even though such business may be privately managed, means that a unification of policies can be brought about, which, according to all indications, should be of general benefit from the standpoints of economy and efficiency. Thus, canals, railways, and other traffic enterprises may be coördinated, dams connected with the waterways may be used to manufacture electrical power, and this in turn may be supplied cheaply to electrifying the railways. Many steps in these directions have already been taken.

Finally, it must be realized that the Reich, without requiring a constitutional amendment, and with no need of an extraordinary majority for the passing of a law, may go to any lengths that it considers advisable in the direction of socialization. The words "adapted to socialization" are not defined in the Constitution; consequently it lies within the discretion of the Reichstag to apply them from time to time to any economic enterprise which it may desire to transfer to public ownership. The remainder of Article 156 authorizes practically any arrangement which may be worked out by the Reichstag to secure any desired degree of interest in economic enterprises of whatsoever nature. The application which has been made so far of this authority shows great care and discretion in the selection of enterprises and methods, an absence of any tendency toward over hasty socialization, and a steady development along the line of social and economic principles which have prevailed in Germany for many decades.



## CHAPTER XVII

### THE REGULATION AND ADMINISTRATION OF BUSINESS, EXCHANGE, AND BANKING

**Business and Exchange.** The work of the Reich in regulating business by means of the Cartel Court, and the special functions of the National Economic Court, have been discussed elsewhere in this book.<sup>1</sup> At this point, therefore, only a few words are needed on the administrative significance of the type of regulation accomplished through the Cartel Court. This court was established in connection with the National Economic Court, by the ordinance of November 2, 1923,<sup>2</sup> "Against the Misuse of Situations of Economic Power." The ordinance requires that agreements and decisions as to production, sales, trade conditions, price fixing, and the like, must be in writing; and provides that they may be invalidated by the Cartel Court upon application by the national Minister of Economics, if they are found to be inimical to the general economic life or the public welfare. Such a system, in which a special court is provided, certainly gives to the national administration a more direct and speedy method of "controlling big business" than is provided in the United States in the enforcement of the Sherman Act by the ordinary judicial courts, even allowing for the requirement in that act that cases involving questions of monopoly which are of general public importance shall be expedited. It is noteworthy, also, that no special agency outside of the regular administrative departments is employed in Germany for the prevention of abuses by cartels and syndicates. This work is entrusted to a Minister, and thus comes under Cabinet control to a certain extent. It is consequently knit up at every moment with the general economic policy of the administration in power.

Enforcement of legal or quasi-legal regulations by the courts, either ordinary or special, is not, however, the only method by

<sup>1</sup> Chapter VI.

<sup>2</sup> RGBI. 1923, I, p. 1067.



which business and economic activities are controlled and regulated by the Reich. There is much direct administrative regulation which in the ordinary course of events requires no judicial interference. A survey of the numerous economic functions and controls placed under the administrative authority of the various national departments<sup>3</sup> corroborates the statement made in an important German study, that the economic authorities of the Reich include not only the Ministries of Economics, Labor, and Food and Agriculture, but also those of Finance, Justice, Traffic, and the Post.<sup>4</sup>

Exchanges, or bourses,<sup>5</sup> are under the general supervision of the national Minister of Economics, although each bourse is established separately by the state government and directly supervised by it. Chambers of commerce and industry share in the supervision to some extent, through public commissioners. Certain matters connected with bourses are decided by the Reichsrat, which has established an advisory council of experts for its assistance.

This type of administration is interesting because of the various authorities concerned in it. National, state, and private business, are all represented in control over the bourses, and the advisory council system, so frequently employed in Germany, is used here very appropriately.

**Money and Banking.** A law of 1924<sup>6</sup> regulates coinage and fixes money values on a gold standard. No one is required to accept in payment of any sum, silver coins to an amount of more than twenty Reichsmarks, or small coins of other material than silver to more than five Reichsmarks; but the treasuries of the Reich and the states, as well as that of the Postal Administration, must accept these coins in any amounts. The interesting features of this law, from the standpoint of administration, are as follows:

<sup>3</sup> Chapter VI.

<sup>4</sup> De Grais, *Handbuch der Verfassung und Verwaltung*, 1926 edition, revised by Peters and others, p. 536 ff. Pages 566 ff. of this book give an excellent brief account of the regulation of business, as well as citations of laws and ordinances governing. As no important administrative principles are involved, other than those already mentioned, this subject cannot be discussed further in the present study.

<sup>5</sup> See new version of Bourse Law, RGBl. 1908, p. 215; also amendments, RGBl. 1920, p. 2317; RGBl. 1922, I, p. 25; RGBl. 1924, I, p. 735; RGBl. 1925, I, p. 31.

<sup>6</sup> Münzgesetz, RGBl. 1924, II, p. 254; executory ordinances for the same, II, pp. 383, 430; I, pp. 775, 966.

The national Minister of Finance, with the consent of the Reichsrat, fixes the charges made by the mints to private persons for coining gold, within a maximum price set by law. He also decides, again with the consent of the Reichsrat, upon the amounts to be coined, the division of these amounts among the individual mints, and the recompense due to the mints for each kind of coin made. Through his orders metal for coinage is secured for the mints.

A maximum of twenty Reichsmarks for each individual is set by law for the currency in pieces of five marks or less. Within this limit, the Reichsbank is empowered to place such coins in circulation, according to the requirements of trade. The details of this matter are settled by agreement between the Reichsbank and the national Minister of Finance. The other functions which this law bestows upon the Minister of Finance, subject to the consent of the Reichsrat, are:

He designates the public treasuries which are to redeem silver and other coins in gold or gold-secured Reichsbank notes, and arranges the details of this exchange;

He calls in coins which are to be retired from circulation;

He issues "police" orders for the maintenance of a properly regulated currency; and

He specifies the value beyond which foreign gold and silver coins are not to be employed as circulating media, or he may totally forbid the circulation of foreign coins, or announce that they are to be accepted by the treasuries of the Reich or the states, under certain conditions.

This type of control over the coinage is designed to leave final power to the central administration, while giving the states great influence through the Reichsrat, and also allowing the Reichsbank to be the judge of the actual needs of business for token money.

*The Reichsbank.* The Reichsbank, which was transformed in consequence of the Bank Law of August 30, 1924,<sup>7</sup> as a result of the acceptance of the Expert Plan, is a bank independent of the national administration. Except for the limited rights to issue notes of four private banks of issue, it has the exclusive right to issue bank notes in Germany. Its location is Berlin, but it is authorized

<sup>7</sup> The descriptions of the banks which follow here are taken in part from the laws governing, and in part from the official *Handbuch für das deutsche Reich*, 1926. For law on the Reichsbank, see *RGBl.* 1924, II, p. 235.

to maintain branch offices anywhere in the national domain. It is managed by the Reichsbank Directorate, which establishes the policy of the bank in respect to values, discount, and credit. All members of the directorate are citizens of the Reich. A general council composed of fourteen members, seven of whom are foreigners, elects the president of the bank, and consents to his appointment of the other members of the directorate. The general council must examine the reports laid before it by the president and the Commissioner, and must decide upon proposals that may be made; yet its action must not encroach upon the rights of administering the Reichsbank which are reserved to the Reichsbank Directorate. One of the foreign members of the general council is the Commissioner for the issuing of notes; he must supervise the execution of the provisions made for the issuing of notes and for the covering of notes in gold. The shareholders in the Reichsbank are represented through the general assembly and through the central committee chosen from it. Another representation exists, in the district committees connected with the larger branch banks. The 450 branch enterprises are in part directly subordinated to the Reichsbank Directorate (seventeen Reichsbank main offices; eighty-four Reichsbank offices), in part dependent upon a branch bank (348 Reichsbank subordinate offices; one warehouse). Two Reichsbank subordinate offices are directly subordinated to the Reichsbank Directorate.

The Reichsbank publishes in the "National Advertiser" (Reichsanzeiger):

Statements as to the condition of its assets and liabilities on the 7th, 15th, 23d, and last day of each month; and as to the eventual obligations arising from negotiable circulating securities payable in Germany; and

A new balance of its assets and liabilities, and the annual closing of its profits and loss accounts, not more than six months after the close of each fiscal year.

The particular functions bestowed by law upon the Reichsbank include the regulating of the currency, discounting, making loans, and otherwise facilitating financial transactions, and in general serving as a medium for the application of capital in useful ways.<sup>8</sup>

<sup>8</sup> A list of its functions covering several pages is found in Section 21 of the law cited above.

*The German Gold Discount Bank.* The German Gold Discount Bank, which was established in 1924,<sup>9</sup> is to meet the credit needs of the business circles engaged in exporting, and also to work in other ways for the improvement of the German balance of trade. It operates with its own capital, and with the help of domestic and foreign credits.

The capital stock was fixed at ten millions of pounds sterling. All the shares are held by the Reichsbank.

The business office is in Berlin and is managed by employees of the Reichsbank. Applications for loans, when made by firms in the provinces, must be forwarded through the branch of the Reichsbank which has dealings with the applicant.

The bank publishes in the "National Advertiser," its annual balance sheet and the estimates of profit and loss.

*The German Land Credits Bank.* The German Land Credits Bank<sup>10</sup> was established in 1925. Its function is to procure and grant credits for the objects of German agriculture in all its branches, including the encouragement of land cultivation and of agricultural settlement. The credits shall be granted for the purpose of developing agricultural production. The grant of credits may be made only to specified credit institutes and offices, not directly to the farmer. Loans may be made as personal credits, as well as credits against real estate.

The organs of the German Land Credits Bank are: The Directorate, the administrative council, and the institutional assembly.

The Directorate is appointed by the administrative council. Its functions are the carrying on of business and the management of property.

The administrative council consists of the chairman, eleven persons elected by the institutional assembly, eleven appointed by the Reichsrat, one representative of agricultural laborers chosen by the national Cabinet, and one other person chosen by the national Cabinet. The administrative council may select, in addition to these, two experts in the field of loans. The period of service of the members is five years. The administrative council has the function of current supervision of the entire conduct of business.

<sup>9</sup> RGBI. 1924, II, pp. 71, 73, 246; Handbuch für das deutsche Reich, 1926, p. 247.

<sup>10</sup> RGBI. 1925, I, p. 145; Handbuch, 1926, pp. 264, 265.

The institutional assembly consists of 110 members, who serve for five fiscal years. Of these members, twenty each are chosen by:

The German Agricultural Council  
 The National Land Union  
 The Association of German Farmers' Unions  
 The National Association of German Agricultural Societies  
 The General Union of German Loan-Bank Associations  
 The executive organization of the organizations of small and moderately-sized agricultural enterprises, chooses ten members.

*Bank for the German Obligations on Industry.* The Bank for the German Obligations on Industry was established by law in 1924,<sup>11</sup> to serve as intermediary between the German economic groups which were to be burdened for reparations purposes according to the Experts' plan, and the organs of reparation. It has to administer the obligations assumed by the burdened enterprises, to issue industrial bonds covered by these obligations, to regulate the interest and repayment of the bonds with the assistance of the sums to be secured according to the levy law of August 30, 1924, and to execute all administrative matters connected therewith.

The bank is managed by a directorate and a supervisory council. A majority of the members of the council are selected by the national Cabinet; the others, by the Reparations Commission and the non-German members of the general council of the Reichsbank.

A Trustee for the obligations on industry is named by the Reparations Commission on the basis of the London Protocol and the law concerning the burdens on industry. His office in Berlin is connected with the bank. He is to see that the obligations laid on industry are carried out.

All the banks here studied are established by national law, and each one is connected in some way, however slight, with the national administration. The Reichsbank and the German Gold Discount Bank are merely required to send in reports which are published in the "National Advertiser." The relation of the former (which also manages the latter) to the Dawes Plan makes any real control by the national administration at present impossible.

The German Land Credits Bank, on the other hand, is much more closely related to the public administration, through the ap-

<sup>11</sup> RGBL 1924, II, p. 257 (261 ff.). Handbuch, 1926, p. 266.

pointment of more than half of the members of its administrative council by the Reichsrat and the Cabinet. The choice of the others by the institutional assembly which represents agricultural interests and loan bank associations, furnishes the representation of interests so often and so advantageously used in Germany.

The Bank which handles the reparations sums paid by industry, though established for a very special purpose and in part subjected to a foreign element, and though it is in no sense a national bank, is yet controlled administratively by persons selected by the Cabinet. This arrangement and the provision that the foreign influence is to a certain extent identified with the Reichsbank, keep the bank well in touch with national economic policy and with the financial policy of the Reichsbank.

**Other Economic Enterprises and Controls.** In addition to the enterprises which have just been examined, there are many others of an economic nature in which the Reich participates, directly or indirectly, through financial support or administrative control, or both.

For the most part these are either not of sufficient general importance, or do not display such original and instructive administrative arrangements, or such new developments in recent years, as to warrant a study of their administration in the necessarily restricted space of the present inquiry. A few of them, however, should at least be mentioned. The Reich (in part with the coöperation of the states) is doing important work in the reclamation of waste lands, forestry, the protection and promotion of fisheries and game preserves, the promotion of agriculture, and the provision of assistance to persons desirous of securing farms and homesteads.<sup>12</sup> A national monopoly on spirits is administered by a special organization under the supervision of the Minister of Finance.<sup>13</sup>

Many of the functions bestowed upon the Reich by the Constitution, such as the power of legislation (and, if it so chooses, of ad-

<sup>12</sup> See Constitution, Articles 7, 155, 156. Handbuch für das deutsche Reich, 1926, pp. 180, 232-35. Much of this work is merely a continuation or extension of functions undertaken before the adoption of the Weimar Constitution. For a list of laws governing, which would cover several pages, see footnotes in de Grais-Peters, Handbuch der Verfassung und Verwaltung, 1926 ed., pp. 688-710; 727-61.

<sup>13</sup> RGBl. 1922, I, p. 405; RGBl. 1923, I, p. 770, Article IX; RGBl. 1924, I, p. 68, Article II, and various executory regulations. See Handbuch für das deutsche Reich, 1926, p. 162.

ministration) in respect to theaters and moving pictures, touch upon the economic sphere, although economic control is not the primary object in the allocation of these functions to the Reich.

**The National Economic Council.** Article 165 of the Weimar Constitution reads in part as follows:

The workers and employees, in order to guard their social and economic interests, shall receive legal representation in occupational councils, as well as in district workers' councils, organized according to economic districts, and in a National Workers' Council.

For the purpose of fulfilling all economic functions, and of co-operating in the execution of the socialization laws, the district workers' councils and the National Workers' Council shall meet with the representatives of the entrepreneurs and other interested groups of people, as district economic councils and a National Economic Council. The district economic councils and the National Economic Council are to be so organized that all important occupational groups are represented therein according to their economic and social significance.

Before bills of fundamental importance from the standpoint of social and economic policy are introduced, the national Cabinet shall submit them to the National Economic Council for its opinion. The National Economic Council has the right to propose such bills itself. If the national Cabinet does not agree to them, it must nevertheless introduce the bills into the Reichstag, with a statement of its own viewpoint. The National Economic Council can have the bill represented before the Reichstag by one of its members.

Functions of control and administration can be transferred to the workers' councils and economic councils within the districts assigned to them.

To regulate the establishment and the duties of the workers' councils and the economic councils, as well as their relationship to other social self-administering bodies, is exclusively a function of the Reich.

The intent of these provisions is perfectly plain; namely, to establish a system whereby the economic interests of the working classes shall receive a certain degree of representation from the legislature, and to provide for a limited coöperation of the workers, in the execution, control, and administration of laws of fundamental interest to them.

A less obvious but none the less real object was the establishment of some sort of acceptable compromise between the extreme left



groups who wished to see the principle of economic representation pushed as far as possible, giving the numerical majority, the laborers, the balance of political power, and the more conservative elements in the National Assembly, to whom may be attributed the inclusion in the National Economic Council of representatives of entrepreneurs and other interested groups, as well as representatives of labor. No discussion of the economic and social significance of the institution can be undertaken here. It must be noted, however, that from the administrative standpoint the National Economic Council has had little influence as yet; in part because its composition<sup>14</sup> is avowedly only of a temporary or preliminary nature; in part because no important administrative duties have been assigned to it, unless one considers as such "coöperation in the establishment of the workers' councils, representation of entrepreneurs, and economic councils, provided for in the national Constitution."<sup>15</sup>

Like certain other constitutional arrangements, the National Economic Council remains a tool lying in the chest, ready for use, but as yet scarcely tested.<sup>16</sup>

<sup>14</sup> See RGBl. 1920, p. 858, for the ordinance establishing the preliminary National Economic Council.

<sup>15</sup> RGBl. 1920, p. 858, Article II, Section 2.

<sup>16</sup> For an interesting discussion of the National Economic Council, with a useful bibliography, see *Der Reichswirtschaftsrat*, by Dr. Konrad Gesch, published by J. Fink, Stuttgart, 1926.



## CHAPTER XVIII

### INSURANCE AND SOCIAL WELFARE

**Insurance.** Legislation in respect to insurance is a concurrent function of the Reich and the states,<sup>1</sup> but by far the most important laws which have been passed on this subject are national ones. Both the general insurance laws<sup>2</sup> and the social insurance code<sup>3</sup> were passed long before the adoption of the present Constitution, and all have been amended repeatedly. As the amendments have not made very important changes in the main administrative features of these laws, and as the subject of insurance methods in Germany, particularly with reference to social insurance, has been extensively studied by English and American writers, only the briefest outline of the matter will be undertaken here.

Private insurance companies which operate beyond the boundaries of a single state are supervised by the Reich; and those which operate only within a state may be placed under national supervision. Foreign insurance companies doing business in the Reich must also submit to supervision by the national authorities. The agency charged with this work is the National Supervisory Office for Private Insurance, within the Ministry of Economics.<sup>4</sup>

<sup>1</sup> Constitution, Article 7, No. 17; Article 12. See Article 161, as to which von Freytagh-Loringhoven (*Die Weimarer Verfassung in Lehre und Wirklichkeit*, p. 375) caustically remarks that it is superfluous, since a comprehensive system of social insurance has long been in existence, "thanks to imperial legislation," and the only new feature suggested by the present Constitution is "the dominant coöperation of the insured."

<sup>2</sup> Law on Insurance Contracts, of May 30, 1908 (RGBl. 1908, p. 263). Referred to as VV. Law on Private Insurance Companies, of May 12, 1901 (RGBl. 1901, p. 139). Referred to as PVU. For a list of amendments to 1926, see de Graiss-Peters, *opus* cited, p. 590 ff. For later amendments consult index of RGBl. *unter Versicherung, Privatversicherung*.

<sup>3</sup> National Insurance Code of July 19, 1911 (RGBl. 1911, p. 509 ff.); English version in U. S. Department of Labor Bulletin, No. 96, 1911; revised version, RGBl. 1924, I, p. 779 ff.; revision of books 3, 5, 6, RGBl. 1926, I, pp. 9 ff. Code is referred to as RVO. For later amendments, see index of RGBl. *unter Sozialversicherung*.

<sup>4</sup> For a brief description of the work of this agency, see Chapter VI.

*Social Insurance.* The social insurance code is divided into six books, comprising altogether 1805 sections with numerous subdivisions. The books cover, respectively, the following subjects: General provisions; sickness insurance; accident insurance; disability insurance;<sup>5</sup> relations of the carriers of insurance to one another and to the other agencies liable; and procedure.

The first book begins by defining the scope of the law, and establishing the "carriers" for each type of insurance. By insurance carriers the law means the associations or institutions which undertake the insuring of certain classes; not the holders of policies. The carriers are: Sick funds, for sickness insurance; occupational mutual benefit associations, for accident insurance; and insurance institutes, for disability and survivors' insurance. Each carrier has a directorate which represents it in a legal capacity and carries on its business administration. This directorate consists of representatives of the carrier and of the insured persons. The ways in which moneys paid in are to be managed and invested are carefully prescribed; also the cases in which the supervisory authorities must consent. The supervisory authorities are directed, according to circumstances, by the highest administrative authorities of a state or the national Minister concerned. The Minister of Labor sets the standards for the exercise of this right of supervision.<sup>6</sup>

The insurance authorities are: the insurance offices; the higher insurance offices; and the National Insurance Office and the State Insurance Offices.

An *insurance office* is connected as a rule with each inferior administrative authority of a state; though several such authorities may join in the establishment of one insurance office. The chairman of the insurance office is the director of the administrative authority; at least twelve assistants, half of whom represent insurance carriers and half insured persons, are associated with him. Each insurance office has one or more committees for judging, and one or more committees for deciding, matters assigned to them by law. The highest administrative authorities may permit technical governmental and local officers to have an advisory voice when decisions are to be made.<sup>7</sup>

<sup>5</sup> Disability insurance also includes "survivors'" insurance, or incomes for widows (sometimes widowers) and orphans.

<sup>6</sup> RVO. Sections 1-30.

<sup>7</sup> RVO. Sections 35-60.

The *higher insurance offices*, which decide appeals, make decisions, and act in a general supervisory capacity in respect to the lower offices, are usually established for the district of a higher administrative authority. Such offices, however, may be established by the highest administrative authorities for a different district; or the governments of several states may establish one general office for their domains or parts thereof. Special offices may be set up for occupational administrations and services of the Reich or the states, which have their own occupational sick benefit funds; and for groups of occupations, for the employees of which special institutes provide the disability and survivors' insurance. The highest administrative authorities may connect these offices with higher national or state authorities, or may establish them as independent state authorities. In the former case, the head of the national or state authority becomes chairman of the higher insurance office; a director of the office is then appointed as his permanent representative. Other members of the office are appointed from among public officers; associates or advisors are chosen from employers and insured persons in equal numbers.

Each higher insurance office creates one or more judging chambers (each consisting of one member as chairman and one associate each from the representatives of the employers and of the insured), to handle matters which the law subjects to the procedure of judgment; and one or more deciding chambers (each consisting of the chairman of the office, another member, and one associate member, and one associate each, from the representatives of the employers and of the insured) to manage affairs assigned by the law to the procedure of decision.<sup>8</sup>

The *national insurance office*, located in Berlin, is the highest authority for appeals, decisions, and supervision. Its decisions are final except as the law specifies otherwise. The president of this office and the permanent members are appointed for life by the national President, upon the motion of the Reichsrat.

The national President also appoints from among the permanent members the directors and the senate presidents; other officers are selected by the national Minister of Labor.<sup>9</sup> Of the thirty-two non-

<sup>8</sup> RVO. Sections 61-81.

<sup>9</sup> For the connection of this office with the Ministry of Labor, see Chapter VI.

permanent members of this office, eight are chosen by the Reichsrat (six of these from among its own members); twelve represent employers, and twelve represent insured persons. The National Insurance Office establishes senates for judging and senates for deciding, and a Great Senate for affairs which the law assigns to it. The Great Senate consists regularly of the president of the office or his substitute, two of the members chosen by the Reichsrat, two permanent members, two judicial officers, two employers and two insured persons.<sup>10</sup>

A state with at least four higher insurance offices may retain a state insurance office if it has established one before the passage of the insurance code.<sup>11</sup>

Certain classes of working persons must, and others may, be members of sick funds. The payments to these funds are made by employers and insured employees, the former paying one-third and the latter two-thirds.<sup>12</sup>

The law specifies the classes of persons who must, and those who may, take out accident insurance. The costs of this insurance are borne by the members of the occupational mutual benefit associations, from whom collections are made to cover the costs incurred during the preceding fiscal year.<sup>13</sup> Special provisions are made for agricultural accident insurance,<sup>14</sup> and for accidents at sea.<sup>15</sup>

Disability insurance is also made compulsory for certain classes of workers and voluntary for others. Although both the other types of insurance pay funeral benefits and pensions to widows (sometimes to widowers) and orphans under certain conditions, the so-called survivors' pensions are a specialty of this type of insurance, as are old-age pensions also. The funds for disability insurance are secured from the Reich, the employers, and the insured employees. The obligations of the two last-mentioned classes are paid by the purchase of special stamps at a post office or a sales office of the insurance association. These stamps are affixed to a receipt card. Employer and employee must each bear half the cost of the stamps.

<sup>10</sup> RVO. Sections 83-104.

<sup>11</sup> RVO. Sections 105-09.

<sup>12</sup> See Sections 165 ff., especially 306 and 381.

<sup>13</sup> Sections 537 ff., especially 731.

<sup>14</sup> Sections 915 ff.

<sup>15</sup> Sections 1046 ff. See also RGBl. 1923, I, p. 117; RGBl. 1924, I, pp. 292, 560.

The Reich pays fixed subsidies for the disability, widows', widowers', and orphans' allowances actually paid out each year.<sup>16</sup>

The code provides in detail for the administration of each carrier of insurance, and for the conditions under which benefits are to be paid. Penalties are established for violations of the law; with the possibility of final appeal in most cases, to the upper or highest administrative authorities of the insurance system.<sup>17</sup>

The relations of the carriers of insurance to one another and to other liable agencies, such as the public relief agencies, are carefully regulated. One or two examples of this type of regulation will suffice to show its general purpose and scope. Thus, death benefits from sickness insurance are charged to the carrier of accident insurance, insofar as they do not exceed the death benefits which the latter guarantees.<sup>18</sup> Controversies between a fund and an insurance institute arising out of a transfer of relief . . . are to be decided finally by the insurance office if the question does not involve a claim for reimbursement. A controversy which does involve a claim for reimbursement is decided by judgment procedure.<sup>19</sup>

The last book of the code is devoted to procedure. It provides for the determination of benefits by an expedited procedure, upon application by the insured person or his representatives; except in the case of accident insurance, when the initiative is to be taken by the authorities. The employer is made responsible for reporting accidents in his establishment, on forms provided by the National Insurance Office. All claims are to be carefully examined according to methods set forth in detail by the law. In most cases appeals are permitted against the decisions of the insurance carriers. Such appeals are directed to the insurance office in cases concerning sickness insurance and disability insurance; to the higher insurance office in cases concerning accident insurance. In some cases appeal is allowed against the decisions of the insurance office as the authority of first instance, to the higher insurance office; and against the decisions of the higher insurance office as the authority of first instance, to the National Insurance Office (sometimes the state insurance office). After a hearing, the authorities competent to make

<sup>16</sup> Sections 1226 ff., especially 1285, 1387, 1411 ff.

<sup>17</sup> Sections 529-36, 1220-25, 1487-1500.

<sup>18</sup> Section 1508, revision of 1926 (RGB1. 1926, I, p. 9 ff.).

<sup>19</sup> Section 1520.

the decision may either decide the case themselves or refer it back to a lower instance or to the insurance carrier.

When the insurance office is not acting as the authority of first instance, but is deciding an appeal, a further appeal is usually permitted to the higher insurance office. In this case the decisions of the latter body are final. If, however, it wishes to dissent in such a case from an officially published fundamental decision of the National Insurance Office or a state insurance office, or when the question concerns the interpretation of legal provisions of fundamental importance which have not previously been interpreted, the National Insurance Office or the state office makes the final decision, after the higher insurance office refers the case to it and states its own interpretation.<sup>20</sup>

In the same way, when the higher insurance office decides an ordinary appeal, further appeal is permitted to the National (or state) Insurance Office.

*Unemployment Insurance.* Since no regular system of insurance against unemployment was included in this code, a special law was passed in July, 1927,<sup>21</sup> which established such a system. It also provided for the lessening of unemployment so far as possible, by making the offices of the unemployment insurance scheme likewise public employment agencies and centers for vocational guidance and for the placing of apprentices.<sup>22</sup>

A National Institute for Labor Exchange and Unemployment Insurance<sup>23</sup> is established by this law. The Institute consists of a central office, state labor offices, and local labor offices. Each local and state labor office has an administrative committee, and the National Institute has an administrative council and a board of directors. All these organs consist of (a) the director of the office or the president of the Institute, or a person who represents such officer, who holds the chairmanship; (b) equal numbers (varying for the different organs according to the specifications of the law) of representatives of employers, workers, and public corporations

<sup>20</sup> RVO. 1926 amendments, Book VI. (RGBl. 1926, I, p. 9 ff., Sections 1545-1805.)

<sup>21</sup> Gesetz über Arbeitsvermittlung und Arbeitslosenversicherung, RGBl. 1927, I, p. 187.

<sup>22</sup> *Ibid.*, Section 1.

<sup>23</sup> Reichsanstalt für Arbeitsvermittlung und Arbeitslosenversicherung.

(communes, communal associations, and the like). In all these organs women are to be represented, and in each group representing workers there must be one or more clerical or other non-manual employees.<sup>24</sup>

Those insured under this act are:<sup>25</sup>

1. Persons compelled to insure under the national law for insurance against sickness or the national law for miners' insurance.
2. Anyone who is compelled to insure under the law for the insurance of employees, and who is excused from insurance against sickness only because of the height of his salary.
3. Members of German ships' crews.

The dues for unemployment insurance are paid in equal parts by the employer and the employee. Dues, and amounts received by the insured in case of unemployment, vary with the salary of the insured. In addition to the basic sum paid for support in case of unemployment, certain allowances are made for dependent members of the family. As a rule the insured must be unemployed for one week before receiving the benefits of the insurance, which will be paid for not more than three months.<sup>26</sup>

Dues are paid in connection with the payments for insurance against sickness, and the sums received by the treasuries for the latter kind of insurance are forwarded at once to the state labor offices, or in the case of ships' crews, to the National Institute. Financial adjustments among the various members of the Institute are provided for in the law, as are numerous points of procedure.<sup>27</sup>

*Employees' Insurance.* A special law<sup>28</sup> provides for the insurance of certain classes of employees not included under the social insurance code, or provided for by the prospect of pensions for public service. In some cases the taking out of insurance is compulsory; in others, it is optional. The scope of this insurance includes pensions in case of incapacity or old age, and provision for surviving dependents.<sup>29</sup>

<sup>24</sup> Sections 2-14.

<sup>25</sup> Section 69.

<sup>26</sup> Sections 142, 143, 105-07, 110, 116.

<sup>27</sup> Sections 145, 147 ff., 168 ff.

<sup>28</sup> RGBI. 1924, I, p. 563. See index of this and later volumes under *Ange-stelltenversicherung*, for details and changes.

<sup>29</sup> *Ibid.*, Section 23.



A National Insurance Institute in Berlin is made the carrier of this insurance. The directorate of the Institute, which represents it legally and otherwise, consists of a president, his deputy, and three representatives each of the insured employees and the employers. An administrative council prepares the estimates, inspects the conduct of affairs, coöperates in the administration of property, and assists in making important decisions. This council consists of at least twelve representatives each, of the insured employees and the employers, together with the president of the directorate. Trustees are elected by districts; half by the insured employees and half by the employers. The trustees select the members of the administrative council, as well as the advisory members of the special divisions for employees' insurance that are established in connection with the insurance offices, the higher insurance offices, and the National Insurance Office. Procedure before these last-named authorities is established by the law. The general execution of the law is supervised by the national Minister of Labor, who is also authorized to issue ordinances covering certain points in detail, sometimes after hearing the Insurance Institute and the Insurance Office, sometimes subject to the consent of the Reichsrat.

*National Insurance for Miners.* The especially hazardous nature of the mining industry has led to the passage of a special national insurance law<sup>30</sup> for the benefit of laborers and employees connected with it. The provisions of this law are very similar to those of other social insurance laws; payments of equal sums are made by employees and workers on the one hand, and employers on the other. The National Miners' Union is the carrier of the insurance. Its organs are a directorate and a high assembly. Each organ is composed of an equal number of representatives of the insured and their employers. The national Ministry of Labor exercises general supervisory power.

**Social Welfare.** The numerous activities comprised in the general term "social welfare" are carried on, as a rule, by the local units of government, under legislative norms set by the state and the Reich, and under the administrative supervision of the higher state and national authorities. The field of social welfare is so broad that only a few of its most important aspects can be discussed here.

<sup>30</sup> RGBl. 1923, I, p. 431; executory law, *Ibid.*, p. 454.



*Poor Relief.* Both the Reich and the states possess power to legislate in respect to poor relief,<sup>31</sup> and the necessities of the post-war period have caused this power to be exercised to a considerable extent.

In 1924 an ordinance of the national Cabinet<sup>32</sup> caused the consolidation of the smaller local relief agencies into stronger poor-law-unions. It permitted the state to designate certain of these as state poor-law-unions and others as district poor-law-unions, and to assign functions accordingly. A number of functions are listed in the ordinance, as required; the state may add others.

The poor-law-unions are public law corporations. The state regulates their procedure and supervision within the limits of the national law; the national Cabinet, usually with the consent of the Reichsrat and sometimes with that of a committee of the Reichstag, establishes certain fundamental principles.

In case of legal difficulties between poor-law-unions in the same state, the district committees decide, through administrative court procedure. When the parties to the conflict are poor-law-unions of different states, petitions may be made to the final instance, the United Service for Relief Agencies in Berlin.<sup>33</sup>

*Administration of Labor Legislation.* For many years Germany has been noted for her progressive legislation concerning hours and conditions of labor. From the standpoint of administration, however, there is little of special interest in these laws, as they are with few exceptions administered by the ordinary police authorities or administrative authorities, under the general supervision of the Ministry of Labor. Such special agencies under this Ministry as the National Insurance Office and the National Labor Administration have been described elsewhere.<sup>34</sup>

*Housing.* The suspension of building due to the World War has caused a very serious shortage of dwellings in Germany, with consequent overcrowding and all the train of evil results that follow this condition. Even before the close of the war, attempts were

<sup>31</sup> Constitution, Article 7, No. 5, read with Article 12, par. 1. See also Article 163, paragraph 2.

<sup>32</sup> RGBI. 1924, I, p. 100; amended, RGBI. 1926, I, p. 255.

<sup>33</sup> *Ibid.*, Sections 29 ff.

<sup>34</sup> Above in this chapter; also Chapter VI.

being made to remedy the situation, and many laws and ordinances since have been devoted to the subject of housing.<sup>35</sup>

Article 10 of the Constitution gives to the Reich the power of establishing fundamental principles in respect to housing; Article 155 provides for public supervision of the distribution and use of land "with the object of securing to every German a healthful habitation, and to all German families, particularly those with numerous children, a homestead suited to their needs, for dwelling and economic production."

A law passed before the adoption of the Constitution provides that unions of municipalities and territorial districts are to be established, either voluntarily or by order of the central authorities of the state, for the purpose of a unified attempt at meeting the needs of the housing situation.<sup>36</sup>

A law of December 9, 1919,<sup>37</sup> provides that district housing commissioners shall be established by the states for the purpose of providing dwellings of small and medium size. These commissioners have the right to condemn land, as well as timber and other natural building materials, under the regular legal restrictions and subject to payment; to forbid the use of certain building materials or to require special permission for such use, and to exercise other important powers of like nature. The central authorities of the state, or agencies authorized by them, can control in various ways the improper or uneconomical use of building materials or the charging of excessive prices for them. They may also order that no construction may be undertaken without the permission of the district housing commissioner.

The homestead law of 1920<sup>38</sup> arranges for the provision of homesteads as dwellings or as economic enterprises, by the Reich, the states, and municipalities. Certain rights are retained by the governmental unit which provides a homestead, such as the right to give or withhold permission for the assumption of a mortgage, and the right of reversion in case the person to whom the homestead

<sup>35</sup> For a good brief discussion of this subject, with especial reference to Prussia as well as to the Reich, see Lympius, pp. 138-47.

<sup>36</sup> RGBl. 1918, p. 1298; amended by RGBl. 1924, I, p. 257. This law was to continue in effect until March 31, 1927.

<sup>37</sup> RGBl. 1919, p. 1968.

<sup>38</sup> RGBl. 1920, p. 962.

is granted does not occupy it or work it, or uses it improperly. The states are authorized to issue ordinances under this law. The duty of fixing a maximum price on land for small gardens and small farms is given, under another law,<sup>39</sup> to the lower administrative authorities. Many more laws, both national and state, are concerned with other aspects of the housing question; but these are in general more interesting from the standpoint of social economy than from that of administration. A special authority of the nature of an administrative court should be mentioned, however, namely, the Rent Equalization Offices,<sup>40</sup> whose chief functions are indicated by their name. These may be established by municipalities, unions of municipalities, or other communal associations. Appeals from their decisions lie to the authority named by the state, which may be an administrative authority, a state court, or a higher court.

<sup>39</sup> RGBI. 1919, p. 1371.

<sup>40</sup> See RGBI. 1922, I, p. 273; RGBI. 1923, I, pp. 353, 885, 1247; RGBI. 1924, I, p. 111.

## CHAPTER XIX

### THE FORMS OF ADMINISTRATIVE ACTION

The functions of the administration in Germany are fulfilled by the use of forms which have been fixed by law and custom and clarified by numerous court decisions. Many varieties of order, notice, announcement, and instruction are employed within the administration itself, but it is unnecessary to discuss these, as they correspond in general to the forms in use everywhere when a superior authority is directing subordinates. There are certain forms, however, which not only apply within the administration, but which affect the general public. These are, the ordinance—the most important tool of the government in applying the laws—and the administrative order, by means of which the private individual is subjected directly to the requirements of a valid legal norm. Although the ordinance and the administrative order are not peculiarly German institutions, yet their use in Germany has certain special aspects, so that it is essential to a thorough understanding of public administration in that country, to examine these forms and their application.

An ordinance is an expression of the will of the state executive, which establishes general norms. Even though these may be legal norms having the force of law, and considered and applied by the courts as a part of the substantive law, yet the ordinances establishing them are not statutes, since they do not emanate from the legislature but from the executive. Moreover, ordinances differ from mere orders issued by the executive, in that they establish general standards for future contingencies, whereas orders are specific commands applicable to a definite actually given situation.<sup>1</sup>

Ordinances are general mandates of the executive authority; they are marked by their abstract nature, and in this they are differ-

<sup>1</sup> Hatschek, *Deutsches and preussisches Staatsrecht* (1923), Vol. II, p. 113 ff.

ent from orders, which, likewise proceeding from the executive authority, merely regulate concrete individual cases and apply to individual instances.<sup>2</sup>

Ordinances are divided into two chief classes, namely: Legal ordinances (that is, ordinances having the force and effect of law), and administrative ordinances. The legal ordinance is a sort of subsidiary legislation; it may command or forbid certain actions in general, and thus interfere with "the freedom and the property of the governed"; it applies to the public at large. The administrative ordinance is a service regulation, applicable only to persons connected with the branch of administration by the head of which it is issued; but it is also general, as distinguished from an order or direction to a particular person.<sup>3</sup>

**Legal Ordinances.** Ordinances having the force of law, or so-called legal ordinances, may be issued only when a legal (constitutional or statutory) authorization to this effect is given, either with or without special conditions.

Some examples of authorization to issue legal ordinances may be cited, almost at random. The most interesting is probably that bestowed by Article 48 of the Constitution upon the national President.<sup>4</sup> This authorization is unusual in that it is included in a broader one. That is, the Article does not verbally give to the President the right to issue legal ordinances, but this is an inevitable implication of the fact that it authorizes him to take all necessary measures to restore public safety and order, and to set aside certain constitutional rights, which could only be done by ordinance. The Reichsgericht has spoken explicitly on this point:

He is not limited to administrative ordinances, but on the contrary he can also issue legal ordinances with the force of law.<sup>5</sup>

<sup>2</sup> Anschütz, *Die Verfassung des deutschen Reichs*, note 3 to Article 179. See also Stier-Somlo, *Reichs- und Landesstaatsrecht*, I, p. 333; and Mayer, Otto, *Deutsches Verwaltungsrecht*, I, p. 83.

<sup>3</sup> Schoen, *Das Verordnungsrecht und die neuen Verfassungen*, *Archiv d. öff. Rechts*, 1923-24, p. 136. For Triepel's objections to this generally accepted distinction, see *Verhandlungen des deutschen Juristentag*, Bd. 2 (1922), p. 13 ff. But sustaining it, see Meissner, *Das Staatsrecht des Reichs und seiner Länder*, p. 124 ff., 141 ff.; de Grais-Peters, *Handbuch der Verfassung und Verwaltung*, pp. 32, 36.

<sup>4</sup> For full discussion see Chapter IV.

<sup>5</sup> *Entscheidungen des Reichsgerichts*, St. Bd. 56, p. 161 ff. (163). See *Ibid.*, St. Bd. 55, p. 115 ff.

The detailed provisions as to the application of credits granted by the Reich in March, 1926, for the construction of small dwellings, are established by the national Minister of Labor in agreement with the Minister of Finance and Economics, subject to the consent of the Reichsrat.<sup>6</sup>

The law<sup>7</sup> on uniform evaluation of improved real estate gives to the national Cabinet, with the consent of the Reichsrat, the right to set a uniform minimum legal rent for the Reich. Other provisions required by this law are to be established by the state governments.

These are but a few instances of the thousands of similar authorizations to be found in national and state laws.

Schoen<sup>8</sup> raises the interesting question whether any restraints exist upon the legislature's power to authorize the issuing of legal ordinances. He decides that any matter which a constitution says shall be handled "by legislation" may be placed beyond the reach of this power if the language of the constitution is sufficiently clear and explicit. Ordinarily, however, it would be possible to interpret even such a requirement as merely demanding some legislative action on the matter, which may be supplemented by ordinances having the force of law, issued by an agency specified in the act in question. Another restriction lies in the division of powers between state and Reich made by the national Constitution. No authorization to issue ordinances having the force of law can be given, when the power to legislate does not exist.

In order to be valid and binding, a legal ordinance must not only be based upon the requisite authorization, but (a) must remain within the limits of said authorization, (b) must not conflict with existing constitutional provisions or laws unless the authorization permits it to set them aside or alter them (as, for example, Article 48 of the national Constitution does), and (c) must be published in such a way that it can become known to those to whom it applies.<sup>9</sup> As will be shown later, the courts will examine into all these questions.

<sup>6</sup> RGB1 1926, I, p. 179.

<sup>7</sup> *Ibid.*, p. 251, Sections 3, 8.

<sup>8</sup> Schoen, p. 148 ff.

<sup>9</sup> For discussion, see Hatschek, II, p. 123 ff. For court decisions see Entscheidungen des Reichsgerichts, St. Bd. 56, p. 177 (181); p. 371 (375).

The matter of publication has received a good deal of attention. A law of 1923<sup>10</sup> provides that legal ordinances of the Reich shall be published in the Reichsgesetzblatt, or in the Zentralblatt für das Deutsche Reich, or in the Deutscher Reichsanzeiger. Publication in one of these is sufficient. Ordinances under Article 48 may be published in other ways. National legal ordinances go into effect on the day following publication, unless they provide otherwise. Legal ordinances in salary affairs may be published in the National Salary Gazette (Reichsbesoldungsblatt), and those of the post and telegraph administration may be published in an official gazette of the national Post Ministry. Before this law was passed, the general rule had been laid down by the courts, that a legal ordinance of the Reich must be brought to the attention or notice of the public, but that it need not be published in the Reichsgesetzblatt.<sup>11</sup>

The constitutions of Bavaria, Baden, and Brunswick expressly provide for the publication of legal ordinances in the same journal where laws are published.<sup>12</sup> A law of Prussia<sup>13</sup> provides that legal ordinances shall be published in the law gazette or in other specified official publications, and that such as are not published in the law gazette are at least to be listed there. Where such provisions do not exist:

It does not appear that legal ordinances must with absolute necessity be published in the same way which the Constitution prescribes for formal statutes, but rather merely that the publication must take place in such a way that the persons subject to the law are in a position to become cognizant of the content of the norm in a reliable fashion. Deciding upon the place and manner of publication must, insofar as the authorizing law makes no provision on the matter, be looked upon as placed within the judgment of the organ which issues the ordinance. . . .<sup>14</sup>

Ordinances become effective, unless some special constitutional or legal provision governs this point, at the time set in their own text; or if no time is mentioned, on the day of publication.<sup>15</sup>

<sup>10</sup> RGBI. 1923, I, p. 959.

<sup>11</sup> Entscheidungen des Reichsgerichts, St. Bd. 55, p. 115 (119); Bd. 56, p. 337 (338 ff.); Bd. 58, 401 (405).

<sup>12</sup> Bavarian Const., Section 75; Constitution of Baden, Section 57; Constitution of Brunswick, Article 38.

<sup>13</sup> Gesetzsammlung, 1924, p. 597.

<sup>14</sup> Schoen, p. 169.

<sup>15</sup> See Entscheidungen des Reichsgerichts, St. Bd. 55, p. 115 (121).

*Who May Issue Legal Ordinances?* An examination of the Constitution and laws of the Reich shows that a considerable number of agencies are vested with the power to issue legal ordinances on specific matters.

The President may issue legal ordinances under Article 48 of the Constitution, and under any authorization, not since repealed, which was formerly possessed by the Kaiser.<sup>36</sup> The national Cabinet, individual members thereof, the Chancellor, the Reichsrat, the states, the state cabinets and highest administrative authorities, and the subordinate units of government, as well as special *ad hoc* authorities, are or may be vested with the power to issue legal ordinances in respect to matters governed by national law, either directly or by subdelegation.

Within the states, the Ministers, collectively or individually, as well as the various administrative authorities, and any *ad hoc* authorities which the legislature chooses to create, may be vested with this power.

The right to issue legal ordinances may be, and in practice frequently is, limited by the requirement that some other agency or agencies than that issuing a given ordinance must consent to it. Thus the national Constitution requires the consent of the Reichsrat to ordinances regulating the construction, management, and traffic of railways.<sup>37</sup> The Reichsrat is particularly likely to be given a right of consent to national laws "in order to give the states an influence upon the ordinance power."<sup>38</sup> Other agencies to which such a right is frequently given are the National Economic Council, some committee of the Reichstag, or a special administrative or advisory agency. Quite often more than one such agency is required to assent to the same ordinance. If the requisite consent is not given, the ordinance cannot be issued, or if issued, is invalid. The states are of course free to limit legal ordinances issued under

<sup>36</sup> See RV. Article 179; Übergangsgesetz (RGBl. 1919, p. 285), Section 4; Strafgesetzbuch, Section 145, *et al.*

<sup>37</sup> See discussion of this point by Anschütz, RV. Notes to Article 91. A similar provision existed in respect to means of communication (the postal and telegraph systems), but this has been repealed. See RV. Article 88, Sections 3 and 4 (now repealed); also law governing postal finances, RGBl. 1924, p. 287, Section 15, paragraph 2. For discussion as to the extent to which this authorization refers to legal ordinances, see Schoen, p. 142.

<sup>38</sup> Schoen, p. 157.



their own constitutions and laws to the consent of any state agencies; but they can place no limitations upon legal ordinances issued under the authority of the national Constitution and laws, even when such ordinances are issued by state authorities; nor may they impose upon national organs the duty of issuing or consenting to legal ordinances based upon state legal norms.

It must be realized that although the requirement of consent may be of value from the standpoint of practical politics, particularly as avoiding difficulties which would certainly arise between the Reich and the states otherwise, yet the responsibility of the possession of ordinance power is greatly weakened thereby. Thus, the Reichstag can hardly hold the Cabinet responsible for unsatisfactory regulation of a given matter, if the ordinances which the Cabinet considers necessary cannot be issued because the Reichsrat refuses its consent to them.

It is an interesting question whether, or how far, the right to issue legal ordinances, when bestowed upon one agency, can be delegated by it to another. The question was raised before the courts whether powers given to the national Cabinet may be delegated to and exercised by a single Minister. The Reichsgericht has held<sup>19</sup> that the expression "national Cabinet" may refer not only to the Cabinet as a whole, but to the appropriate central office, and that a legal ordinance is valid when issued by the Minister whose department is logically concerned, even though the right to issue ordinances upon the subject was given to the Cabinet. Schoen takes the general stand that subdelegation is permissible insofar as it does not interfere with the responsibility established by the law which bestows the ordinance power, unless the intent of the legislature was obviously otherwise in a particular case. That is, the authority upon which this power is bestowed may delegate it to a subordinate and hence controllable authority, but not to an outside agency which cannot be held responsible.<sup>20</sup> In practice, the power is very frequently subdelegated. Sometimes the laws themselves include permissions to subdelegate it in whole or in part.<sup>21</sup>

*Principal Classes of Legal Ordinances.* No two German authorities agree exactly as to the proper sub-classification of the numerous

<sup>19</sup> Ent. d. RG. St., Bd. 58, p. 401 (407).

<sup>20</sup> *Op. cit.*, p. 165.

<sup>21</sup> See RGBl. 1922, I, p. 518, Section 5; p. 652 (654), Article IV.

legal ordinances. A rough grouping may be made as follows: (1) Executory, (2) supplementary, (3) exceptional, and (4) emergency. Perhaps police ordinances should be added to the list, since they are frequently discussed as if they were legal ordinances of a special type, although upon strict analysis most police ordinances may be considered to belong to one or other of the foregoing categories, ordinarily to the first.<sup>22</sup> It is quite possible, of course, to call every legal ordinance executory, since the execution of the laws or the preservation of the "legal state" must be its final purpose. Nevertheless, it is convenient to make certain distinctions.

Executory legal ordinances,<sup>23</sup> as their name implies, are directed to the end of executing a law. The general power bestowed upon the national Cabinet or upon state cabinets, to see that the laws are executed, or to issue administrative ordinances or directions for the execution of the law, refers only to the right to give official instructions and to set administrative standards, but does not cover the power to impose any other duties or restrictions upon the rights of the individual than are already contained in the law itself. Consequently, a clear and unmistakable grant of authority is needed before the Cabinet or any other agency which the law may charge with the duty of execution can issue legal as well as administrative executory ordinances. Examples of authorization to issue such ordinances, which also make a nice distinction between them and administrative executory ordinances, are found in the following sentences:

The national Minister of Economics, with the consent of the Reichsrat, may issue legal ordinances and general administrative provisions for the execution of this law.<sup>24</sup>

The national Cabinet, with the consent of the Reichsrat, may issue the necessary legal ordinances and general administrative provisions for the execution of this law.<sup>25</sup>

Supplementary legal ordinances are issued to fulfil the provision of a given statute, that a specific agency (as the Cabinet, or a Min-

<sup>22</sup> See Chapter XII of this book for a discussion of police ordinances, which will not be discussed in the present chapter.

<sup>23</sup> See Stier-Somlo, p. 335 ff.; Anschütz, RV. pp. 232 ff.; Giese, RV. p. 202; Jacobi, Arch. d. öff. Rechts, Vol. 39, p. 312 ff.; Triepel, *ibid.*, p. 467; Verf. Aussch., pp. 167 ff., 326, 340 ff., 427, 428.

<sup>24</sup> RGBl. 1925, I, p. 89, Section 11.

<sup>25</sup> RGBl. 1923, I, p. 407, Section 11.

ister) shall regulate the details by ordinance, or shall in other ways supplement the statute by the use of the ordinance power. The national homestead law of 1920 provides, for example, that the highest state authorities may (subject to the limitations of the statute itself) issue supplementary provisions, especially as to the content of the homestead contracts, the regulation of certain legal relationships, etc.<sup>26</sup> National laws quite often lay upon the Cabinet the duty of supplying the details, and the same thing is true of state laws<sup>27</sup> in respect to the state cabinets.

Exceptional legal ordinances are those which are directed to the handling of a so-called extraordinary or exceptional situation. Those issued by the President under Article 48 of the Constitution, or by the agents to whom he delegates the powers thereby bestowed; and similar ordinances issued by the state authorities, either under the provisions of the same Article or by virtue of authorizations derived from the state constitutions and laws, are the outstanding examples of exceptional legal ordinances.

Emergency legal ordinances are those which may be issued to meet a pressing need, when the legislative body is not in session. The Constitution of the Reich does not bestow upon the Cabinet or any other national authority the right to issue such ordinances, but most state constitutions do contain provisions bestowing this right upon the state cabinets, usually subject to the later action of the Landtag.<sup>28</sup> The "dictatorial" powers which Article 48 of the national Constitution gives to the national President and the state governments apply only to exceptional situations in which the public safety and order are seriously disturbed or endangered; whereas emergency ordinances might deal with any situation which required immediate action. There is no doubt that it is in part because the national Cabinet lacks the power to issue "emergency ordinances," that the President's "dictatorial" powers have been used in fields to which in strict logic they do not apply.

**Administrative Ordinances.** The administrative ordinance, although it resembles the legal ordinance in being a general ex-

<sup>26</sup> RGBl. 1920, p. 962, Section 30.

<sup>27</sup> RGBl. 1922, I, p. 888 (890), Article 5, concluding sentence; RGBl. 1926, I, p. 397, Section 2; p. 408 (409), Section 4, No. (5).

<sup>28</sup> Prussian Constitution, Articles 55 and 26; Bavarian Constitution, Section 61, No. 7. For other citations, see Chapter IX.

pression of the will of the state, differs from it, first, in laying duties and obligations only upon officers of the administration, rather than upon the public at large; and, second, in being based as a rule on no special authorization, but upon the nature of the administrative function itself.

If it is the duty of the administration to care for the execution and proper administration of the law, it must also have the power to regulate these matters through general directions to the officers and authorities in charge; just as it must also be empowered to organize the necessary authorities for carrying out the law when the law itself has not done so. . . .<sup>29</sup>

Therefore, administrative ordinances which merely instruct subordinate agencies, officers and employees as to their duties and functions, or establish general rules, classifications, and standards, as a part of the routine of administration, are issued without special authorization, by any superior officer to those under his direction.

The competence to issue administrative ordinances of all kinds arises of necessity, even without special legal provisions, from the purpose and the activities of the administrative authorities.<sup>30</sup>

In many instances, however, authorizations do exist for the issuing of administrative ordinances. This is due in part to a desire for clarity, and in part to reasons arising from special circumstances. The constitution or the laws of either the Reich or any state may allocate the power to organize administrative departments to some other agency than their respective heads; may bestow the right to issue administrative ordinances in certain specific instances upon individual Ministers rather than the administration as a whole; may require the consent of one or more agencies external to that which issues administrative ordinances; or, in general, may make grants and set conditions in respect to administrative as well as legal ordinances.

The national Constitution<sup>31</sup> bestows upon the Cabinet the right to issue the administrative orders required for the execution of the national laws, subject to the consent of the Reichsrat when this

<sup>29</sup> Schoen, p. 172.

<sup>30</sup> Meissner, p. 141.

<sup>31</sup> RV. Article 77. See also Articles 91, 179 (par. 2).

execution is to be performed by the authorities of the states, and subject to other provisions of the laws themselves.

The power to issue ordinances, which belonged to the States' Committee according to the laws in effect until the adoption of the new Constitution, is transferred to the national Cabinet, subject to constitutional requirements as to the consent of the Reichsrat.<sup>32</sup> This naturally includes both legal and administrative ordinances. The constitution of Prussia<sup>33</sup> provides that the state ministry shall issue ordinances for the execution of laws, unless the laws bestow this function upon individual state ministers. The Bavarian constitution bestows upon the ministry as a whole the function of issuing general administrative ordinances, subject in certain cases to the consent of the Landtag.<sup>34</sup> This is, in fact, one of the common functions of all cabinets in Germany.

Administrative ordinances, in short, may be issued by any authority formally vested with this power; or, when no authority is named, and the execution of a law is concerned, they will be issued by the Cabinet of the nation or of a state, as the case may be. When the administrative ordinances, however, are merely general instructions or directions for the performance of duties, they may be issued by every officer or agency of the administration, to apply to officers and agencies which stand in a subordinate position.<sup>35</sup>

The power to subdelegate the issuing of administrative ordinances will hardly be questioned, so long as the agency receiving the power is subordinate to the agency bestowing it, and so long as the delegation does not exceed the local and other competences of the former; otherwise a special authorization is needed.<sup>36</sup>

*Kinds of Administrative Ordinances.* Administrative ordinances, like legal ordinances, are classified in various ways by different

<sup>32</sup> Constitution, Article 179.

<sup>33</sup> Preuss. Verf., Article 51.

<sup>34</sup> Bayer. Verf., Section 61, No. 6; also Section 46. For other states, see Chapter IX.

<sup>35</sup> See Stier-Somlo, *op. cit.*, p. 667 ff.

<sup>36</sup> Schoen claims (*op. cit.*, pp. 190-91) that a special authorization is needed when administrative powers bestowed upon the Cabinet are exercised merely by one Minister, since the Cabinet has no administrative control over the special departments; but the court decision cited above (Ent. d. R.G., St. Bd. 58, p. 401 [407]), although it refers to legal ordinances, certainly covers this point for administrative ordinances as well.

writers. For our purposes they will be discussed under the headings: (1) Organizational, (2) instructional, (3) institutional, and (4) executory.<sup>87</sup>

Organizational ordinances are those which establish and organize departments or agencies of public administration. The typical example of this kind of ordinance is the decree of the national President which established the various national departments.<sup>88</sup> Such ordinances, though administrative by definition, are usually based either on specific legal authorization or on a budgetary grant for a given purpose, as they naturally could not become effective unless the requisite means were made available.

Instructional ordinances, or service directions, are general orders for the carrying on of any part of the public service, issued by a superior agency and binding upon subordinate ones. These ordinances refer to the internal operations of the administrative departments, and may be issued without any authorization except the simple fact of the official relationship. They must of course be in conformity with all superior legal norms and with the orders of the higher authorities, and they may extend only to matters included within the powers of the agency which issues them.

Institutional administrative ordinances are those dealing with the organization and management of institutions which are subject to public ownership, operation, control or regulation. Examples are the administrative ordinances issued by the national Cabinet, with the consent of the Reichsrat, in respect to the construction, management and traffic of railways. It should be kept in mind that both legal and administrative ordinances are issued under the general constitutional authorization regarding railways.<sup>89</sup> Other institutions in respect to which the appropriate authorities issue administrative ordinances include the National Insurance Office for Employees, the Archaeological Institute for the German Reich, the Kaiser-Wilhelm Institute, and many more.

<sup>87</sup> See Stier-Somlo, p. 335 ff.

<sup>88</sup> RGBl. 1919, p. 327. See p. 170, Section 8, for law authorizing the President's action.

<sup>89</sup> Constitution, Article 91. The ordinance power here contemplated has been lessened but not extinguished by the formation of the national Railway Association (Chapter XVI). It still applies fully to lines not included in the Association.

Executory administrative ordinances are directed toward the administration of particular laws. It will be remembered that they place no new obligations upon the public at large, but merely apprise the various authorities concerned, of the duties and functions which they must perform in connection with the enforcement and administration of the various laws. However, when the authorization to issue executory legal ordinances does exist, it often happens that the same ordinance will contain both legal and administrative provisions.

**Legal Remedies Against Ordinances.** Since preceding chapters, especially those on police administration and administrative courts, have described in detail the legal remedies available to the citizen against all ordinances and orders of the administrative authorities which affect his rights, only a very general statement is needed here. In all the states, under the present national Constitution, administrative tribunals must be provided for the protection of the citizen against the administration. These tribunals vary greatly in composition and jurisdiction. A national administrative court is yet to be established. The administrative tribunals in their lower instances, in Prussia and some other states—that is, in the greater part of Germany—coincide with the administrative authorities; or, to express the situation simply, a person who feels himself injured by the authorities may ask them for redress, and failing to receive it, may appeal to their supervisory authorities. In cases specified by law, a still further appeal may be made to an administrative court distinct from the agents of actual administration. Procedure may be formal or informal, according to the nature of the complaint and the grounds of attack. In Prussia the ordinance *per se* cannot be attacked by a private individual except in connection with a protest against an order issued under it, which seeks to compel the individual. The question of expediency cannot be raised in Prussia except by informal procedure, and in the lower instances of administrative tribunals.

Not only the administrative courts, but the ordinary judicial courts, will examine into the question of the legality of ordinances. The Reichsgericht has expressed itself on this matter as follows:

The judge is authorized and obliged to examine the legal ordinances issued by the organs of administration, as to their formal



and material legality, before they are applied. The examination covers the questions: whether the method of ordinance is permissible . . . especially whether the . . . requisite statutory authorization exists, whether it has been issued by the materially and locally competent authorities in the prescribed form and has been made known in the regular manner, and whether its content does not conflict with a superior norm dealing with the same matter.<sup>40</sup>

**The Enforcement of Ordinances.** Administrative ordinances are enforced by way of discipline within the service itself. Legal ordinances are enforced by the administrative authorities, according to the laws governing in the particular instance. The following paragraphs will describe briefly the system in effect in Prussia.<sup>41</sup> Here enforcement by the administration is either execution to compel performance or omission, or execution to compel payment.

*Execution to compel performance or omission* may be accomplished, when practicable, by having a third party perform the desired act or procure the required materials, at the cost of the person who has disregarded an administrative order. When the order cannot be carried out by a third person, either because the recalcitrant individual lacks financial ability to pay the costs or because the nature of the act demanded involves the coöperation of the particular person to whom the order is addressed (as desistance from some socially dangerous or objectionable practice which cannot be brought to an end merely by a seizure of materials), execution may be brought about by fine, with alternative imprisonment. As an extreme measure when the order cannot be carried out otherwise, direct force may be employed; and in very exceptional circumstances, under conditions set by law, armed force may intervene.<sup>42</sup> In all cases, a written notice of execution must precede its actual accomplishment.

Hatschek<sup>43</sup> points out several important differences between executive penalties and police penalties; namely: The former require written notice; the latter do not. The administrative notice of execution may be attacked before the administrative authorities,

<sup>40</sup> Ent. des. RG., St., Bd. 56, p. 177 (181); p. 371 (375). See also Hatschek, Deutsches und preuss. Staatsrecht, Vol. I, p. 29.

<sup>41</sup> See GS. 1817, p. 282, Section 11, I; also Landesverwaltungsgesetz, Sections 132 ff.

<sup>42</sup> See RGBl. 1921, p. 935.

<sup>43</sup> Hatschek, Lebrbuch, p. 422 ff.



whereas redress against penal police orders may be sought only before the regular courts. Administrative penalties are directed toward the accomplishment of a particular future purpose and cannot be carried out if that purpose has been attained, whereas police penalties are enforceable even when the administrative purpose which they are designed to protect is no longer in existence. The limits of fines are not the same, being higher in case of administrative execution. The regulations as to imprisonment are not the same.<sup>44</sup> The principle that a person shall not be punished twice for the same offence does not hold in respect to executive penalties, but only for police penalties.

A warning of administrative execution may be attacked by the same legal remedies which are open against the administrative order on the basis of which execution is to take place. Only a complaint to the supervisory authorities, however, is permitted against the actual performance of execution. This must be entered within two weeks after the notice has been received.<sup>45</sup>

*Administrative execution for payment* is similar to financial execution in civil processes, except that in the former the same authority decides upon the facts and performs the execution. As in other cases of administrative execution, a preliminary warning must be given.<sup>46</sup> If the individual against whom execution for payment is to be brought believes that he is injured in his rights, he may complain to the supervisory administrative authorities within two weeks after the receipt of the warning; but no redress can be sought before the courts, except in certain special cases, as for example, when the execution involves claims against real property.<sup>47</sup>

**Control Over Ordinances.** It has been shown that every ordinance and order issued by an agent of any public administration in Germany is subject to the control of either administrative courts or regular judicial courts, all of which will examine into the question of legality, and some of which will even consider expediency. The citizen is thus protected by the courts from infringements upon his legal rights, on the part of the administration.

<sup>44</sup> For limits of administrative penalties: See RGBI. 1923, I (p. 254), as regards fines; Landesverwaltungsgesetz, Section 132, as regards imprisonment.

<sup>45</sup> Landesverwaltungsgesetz, Section 133, I-III.

<sup>46</sup> See the ordinance of November 15, 1899 (GS. p. 543).

<sup>47</sup> *Ibid.*, Section 2, No. II; also Section 51.

Another type of control over ordinances arises from the organization of the administration. Any subordinate agency will be controlled in the exercise of its ordinance power by the higher agency which supervises it. In some cases the laws provide that even after ordinances have been issued, they may be revoked by the superior authority.

Indirect control over all ordinances arises, naturally, from the political responsibility of the heads of administration to the legislature. A much more direct control is given to the latter in the case of any ordinances, such as emergency and exceptional ordinances, which must be reported to it at once and withdrawn upon its demand. In practice a legislature quite often requests the cabinet to alter, modify, or issue certain ordinances. The requirement of permission from the legislature, one of its committees, or some other agency, as a condition precedent to the issuing of ordinances, is an effective control, but one which results in a weakening of responsibility on the part of the administration.

A very interesting type of control lies in the possibility of amending and revoking ordinances by law. Although the ordinance is, strictly speaking, an expression of the executive branch of the government, as distinct from the statute, which is an expression of the legislative branch; nevertheless, laws are frequently passed amending ordinances, so that a somewhat anomalous situation is created. The personnel retrenchment ordinance has more than once been the subject of such amendment.<sup>48</sup> An example of the revocation of an ordinance by legislative action is found in a law of 1926 revoking the ordinance on potatoes. After the usual introduction, the text of the law is given as follows:<sup>49</sup>

The ordinance on potatoes, of August 24, 1920 (Reichsgesetzblatt, p. 1609), is revoked.

**Summary and Conclusions.** Although by definition the primary function of the administrative agencies in Germany, as everywhere else, is the execution of the laws, they are not restricted to this function in any narrow sense. Germany recognizes the practical impossibility of bringing about a complete separation of governmental

<sup>48</sup> Ordinance of October 27, 1923, RGBl. I, p. 999. As examples of amendments to this ordinance, see RGBl. 1924, I, p. 677, and RGBl. 1926, I, p. 389. For another example of a law amending an ordinance, see RGBl. 1926, I, p. 493.

<sup>49</sup> RGBl. 1926, I, p. 193.

powers, and consequently makes no attempt to institute it as a dogma. The separation of powers is regarded as a convenient division of labor; and where it ceases to be convenient and becomes cumbersome, it is not applied. Thus, both the Reich and the states bestow upon their administrative agents, of which the most important are naturally the Cabinets, powers and functions which are not merely administrative or executive in nature, but which involve acts that partake of the nature of legislation and adjudication. The general ordinance, which may be either administrative or legal in nature, is the chief tool of the administration in its function of executing the laws. Second only to this in importance is the special order directing an individual to obey an ordinance or some other legal norm. If the order is not heeded, a warning of execution may be given, and the administration may proceed to measures of compulsion.

The dangers of a system in which one agency is to a certain extent legislature, judge, and sheriff, are carefully guarded against by a series of controls, political, administrative, and judicial, which secure the citizen in his rights against unjust and arbitrary encroachments on the part of the administration. The particular advantage of these controls is, that although they are varied and complete as protections, they do not serve as checks or impediments to any legal and proper action of the administration. Such a combination of flexible legal norms established by the executing authority, with constitutional, legal and judicial protection of civil rights, or a strong government with safeguards against abuses of power, has obvious and great advantages. It is practicable, however, only under the parliamentary system of government, and could not be employed in the United States (except in a few special instances, such as police orders) so long as a stringent separation of powers prevails in the federal and state governments. It would be both politically impossible, and unsound from the standpoint of good government, to entrust the power to issue legal norms, to judge, and to execute, to public agencies over which the representatives of the people have no real control. On the other hand, the use of the ordinance to establish legal norms which are enforceable as a part of the law has demonstrated itself as both efficient, and harmless to the rights of the individual, in Germany and in other states where the ordinance-issuing agency is responsible to the legislature.

## CHAPTER XX

### SUMMARY AND CONCLUSIONS

In the foregoing chapters we have considered in some detail the governmental and administrative system of Germany. We have seen that, despite the many diversities in organization and operation which appear in the various states and their governmental subdivisions, there is a remarkable uniformity of principle operating throughout, which makes it possible to speak of the German system. From the standpoint of government, the system implies a division of powers and functions between state and Reich; local self-government; and popular election of all legislative and sub-legislative bodies. From the standpoint of administration, it implies in general, decentralization, or the execution of national laws by the states; and even greater decentralization, in that both national and state laws are actually executed largely by local units under state and national supervision. The system further implies an intricate interrelationship of authorities of the various divisions of government, so that all lower units are supervised to a certain extent even in their self-administering capacity. The relation between state and Reich is still in process of adjustment; and it is impossible to foresee at present what form that adjustment will take; but neither of the extreme proposals—a looser federation of sovereign states on the one hand, or an obliteration of state lines and a simple division of the Reich into administrative districts, on the other—contemplates a fundamental change in these essential principles.

The question at once arises, why do not the various demands for administrative reform in the direction of simplification and economy, for the reform of the administrative court system, for a new law of officers, for a change in the relationship of state to Reich, also include the demand for a revision of the fundamental principles of administration? Is the administrative system satisfactory in the main? If so, why? Does it appear equally satisfactory, from the standpoint of the non-German observer?

Any critical estimate of the governmental and administrative system of Germany must involve a discussion of the following questions:

- Is the system democratic?
- Is the system well organized?
- Is the system adequately controlled?
- Is the system manned by a strong personnel?
- Is the system powerful and effective?

**Is the System Democratic?** Whether a governmental and administrative system is democratic depends upon several factors. These may be said to be:

- Whether the people have ultimate control;
- Whether the people can easily bring about changes in their governmental machinery;
- Whether the people have a continuous and effective control over the administration through their representatives in the legislature;
- Whether governmental positions are opened to all those having the proper qualifications; and
- Whether the people have an opportunity to participate widely in governmental activity as laymen.

From all these viewpoints it may be said that the governments of Germany, national, state, and local, are very democratic. The national Constitution and the state constitutions provide that supreme power emanates from the people, thus placing the people in the position of the final controllers of government. The constitutions of both the Reich and the states can be quite readily changed, since the amending authority, except in extraordinary circumstances, is the legislature, elected directly by the people. Moreover, through the initiative the people themselves may amend their constitutions and laws.

The representatives of the people in all divisions of government are elected on the broadest possible basis of suffrage, by "universal, equal, direct, and secret suffrage of all German subjects, men and women, in accordance with the principle of proportional representation." These representatives are entrusted with the immediate control of the administration, and (allowing for certain modifications due to state intervention in local subdivisions) with

the selection of the administrators. The erroneous idea, so prevalent in the United States, as witness numerous state constitutions, that effective popular control over administration can be secured through popular election of administrative officers who are unaccountable (except through hope of reelection) for any of their acts so long as these remain within the law, has no root in Germany. In the local subdivisions, administrators are usually selected for fixed terms, but it is nearly always the representative body that makes the choice, often subject to the approval of the state authorities. In any case, the responsibility of the administrator to the local representative body for financial acts, and the supervision and possible discipline of the superior state authorities, serve as a double line of control. In state and in Reich, where the central administration is expected to assume political leadership, its tenure of office is made to depend upon the confidence of the legislature.

The national Constitution provides that "All citizens without distinction are eligible for public office, according to the provisions of the law and their own qualifications and capacities. All regulations discriminating against women officers are abolished." The educational system throughout Germany is now undergoing changes designed to give the utmost opportunity to all capable students, in the way of direct preparation for public offices of various kinds. This means rapid advances toward true democracy in the civil service.

Provision is made for much lay participation in government, through lay representation in official commissions and committees of many kinds, tax authorities, and even in the courts for certain cases. This appears to be one of the strongest and best features of the German administrative system. Although the lay element is usually advisory in nature—sometimes, however, possessing full voting power with the other members—it furnishes a necessary counterbalance to an administration which might otherwise be too professional in outlook, too bureaucratic. The mixed deputations from the legislature, the administration, and the people, which are frequently called to deliberate upon important and difficult matters, are of great practical value. The system of lay participation makes it possible for the public service to secure the advice and assistance of men of large affairs, experts in various fields, scholars and scientists, who have neither the desire nor the time to devote them-

selves exclusively to public life, but whose knowledge and experience are gladly placed at the disposal of the administration.

From many standpoints, then, the governmental and administrative system of Germany is very democratic; and the increased educational opportunities, together with the weakening of class barriers, which are marked features of her social life during recent years, give promise that it will become more and more democratic as time goes on.

### **Is the Government Properly Organized?**

In respect to territorial divisions and distribution of functions among them;

In respect to the general governmental organization within each area, with especial regard to functions;

In respect to administrative organization;

In respect to the integration of all authorities operating within a given area; and

In respect to the relations of higher and lower authorities.

The question of territorial divisions is an especially important one. Much of the effectiveness of a governmental system depends upon the areas into which it is divided, the functions which are given to the respective areas, and the relationship of these governmental areas to one another.

According to the new Constitution, Germany is a federal state. Although various territorial changes, involving the merging of several small states and other somewhat radical rearrangements, have been brought about in recent years, no attempt has hitherto been made to abolish states or to change them to wholly logical territorial divisions of government. In the main, old historical boundaries have been retained, with the result that several states are composed of scattered bits of territory, there are several small enclave states wholly embodied within other states, and some states are hardly more than cities.

It has become increasingly apparent that the state governmental areas are illogical, and that they necessitate a much larger and more expensive governmental machine than would be required if there were a logical territorial arrangement.

The evils resulting from the present state territorial arrangements are further aggravated by the fact that despite the vast

differences in the size and population of the states, the national Constitution provides for the same kind of governmental organization of all of them—the parliamentary form of government. Moreover, the relation of the states to the Reich is the same irrespective of their area, population, or importance. Consequently, all the states have an expensive and complex parliamentary government, despite the fact that the Reich is passing upon most of the large questions of policy. The small states as well as the large ones have in general their own court system and administrative court system, and an over-complex administrative system.

As has been pointed out in the chapter on local government, the multitudinous codes for local government and the differences in nomenclature, make the local government system of Germany very hard to understand. There can be little doubt that a national code for each kind of local division would be highly desirable, not only from the viewpoint of clarity and simplicity, but also from that of economy, as it would certainly reduce the number of units in keeping with modern ease of communication and transportation.

Organization in any division of government should depend largely upon the functions that are to be performed. Functions which are largely legislative and controlling in nature require a different type of organization than is needed for functions which are largely administrative. That this principle is recognized in Germany to a certain extent, is shown in the different kinds of organization found in the Reich, the states and the localities. The Reich, whose functions include the carrying on of certain large national enterprises, the determination of important questions of public policy, and the supervision of the states in the administration of national laws, must have an organization that is much more sensitive to public opinion than local governments need be, since they are very largely concerned with detailed administrative functions. The parliamentary form of organization has, therefore, been adopted for the Reich. Since the states have relatively few large questions of policy to handle, it is questionable whether the parliamentary organization is suitable for them; nevertheless, it is required by the national Constitution. In the local governments the parliamentary organization does not exist; local organs of self-government cooperate with, and are in some respects controlled by, the administrative agents of the state.



In general, the governmental systems of the Reich, the states, and the localities, despite their differences in form, are based on the following sound principles of governmental and administrative organization :

There is in every self-governing unit an authority that represents the people, in determining policy and in supervising the execution of policy. This authority is elected directly by all the people.

An effective coöperation is established between the legislative or sub-legislative authority and the executive authority by various methods :

In the Reich and the states the administrative authority must have the confidence of the legislative authority.

In the self-administering local units, the administrative authority is usually chosen by the sub-legislative authority.

The doctrine of the separation of powers between the legislature and the administration does not apply, so that the administrative authority is able to carry on many functions that are considered legislative in nature where, as in the United States, this separation is more rigidly maintained. Thus, the administration as a rule is the organizing authority for subordinate administration. It is pre-eminently the planning authority, determining upon general lines of policy and drafting measures suitable for carrying out its policies. Since the national and state administrations must have the confidence of the legislature, it is manifest that the legislature has a final and adequate control. It is not necessary, therefore, that the legislature shall attempt to regulate the administration through a great number of detailed laws. This fact simplifies legislation and at the same time prevents undue rigidity in administration. The fact that the administration plans its own organization not only makes for greater flexibility, but also helps to hold the administration responsible. It cannot excuse itself on the ground that the machinery which it must operate is not suitable for its purposes. A further advantage is, that the administration with its expert knowledge, trained staff agencies, nearness to the people through the numerous officers and agencies under it, and close relationship to the political parties, is much better able to plan than is the legislature itself under ordinary conditions.

The form of administrative organization in which a head of state is at the same time the responsible director of administration, does

not exist in Germany except in the relatively rare mayorial or mayor-council forms of municipal organization. Generally speaking, a collegial type of executive and administrative organization predominates in Germany. According to the national Constitution and the Prussian constitution, the administration is partly collegial and partly controlled by the head of the Cabinet, but in practice the party situation makes the principle of collegiality the prevailing one. As a collegial authority, the administration usually decides questions involving general policy, differences between departments, and questions involving more than one department. All members of the administration must submit to these decisions and carry them out. In respect to affairs regarding which the collegial authority does not decide, they administer their departments individually and under their own responsibility. In general there is a head of the collegial authority who is primarily a chairman, but in the Reich and some of the larger states, as well as in some local governments, he possesses other important powers that do not belong to his colleagues.

Where, as in Germany, the administrative organ has large ordinance power, is responsible for the initiation of policies, and acts as a controlling authority over the administrative agencies of subordinate governmental units, this form of organization has much to recommend it, for here the administrative authority is really exercising functions that are quasi-legislative and judicial in nature.

One obviously favorable feature of such organization is the fact that within the administration itself there is established a controlling authority over any one department. Such a control would seem to be necessary when the head of each department has large ordinance powers, extensive powers of organization, and a high degree of control over the many authorities subordinate to him. The same thing on a minor scale is true of the departmental type of administration found in many local units. The weaknesses of collegial organization—indecision, vagueness, slowness, lack of energy and of definite responsibility—are mitigated by the fact that when once matters have been decided upon, the individual ministers or administrative heads carry them out on their own responsibility. The control of the legislative body over the administrative obviates the chief political objection to the combining of legislative and executive functions in one body, the danger that powers so extensive may be abused for lack of control or check.

As a rule, all special agencies of public administration are placed under, or related to, the administrative departments. It is contrary to German practice to leave boards, commissions, departments, officers, or similar authorities in an independent position. All must be subordinated to or connected with the central authority. Ordinarily subordinate authorities are not placed under the ministry as a whole, but under the most appropriate department. Several good results accrue from such a system. The administration is centralized within a few departments, the heads of which are directly responsible to the Cabinet as a whole in some respects, and in general to the legislature. It is possible for the legislature to exercise an adequate control over these few departments, whereas it could not exercise any proper control over numerous independent or quasi-independent boards and commissions. The time of the legislature is not taken up in passing upon the details of management of a large number of petty authorities, and in hearing the representations and claims of each of these in respect to appropriations. Perhaps the most important feature of such a system is the fact that the determination of minor policies and the day by day management of the business of each agency is linked up with ministers who are responsible to the legislature, instead of being left in the hands of organization chiefs who have no real political responsibility.

It is a general principle of German administration that every agency and authority shall be subject to the supervision of any higher authorities which may exist. The application of this principle results in a hierarchical administrative machine. A definite line of relationship is established among these authorities, usually consisting in the fact that the higher authorities can assign functions to the subordinate authorities, supervise them, issue instructions to them, require information from them, confirm or set aside some of their acts (especially where finances are involved), and exercise other powers of the same general nature. The superior authorities usually act as appellate organs in respect to complaints against the acts of authorities subordinate to them.

This organization is the basis of the strong administrative control which is one of the chief features of the German system. The principal fault of such an arrangement is its complexity, and the tendency to bureaucracy and "red tape" which it can hardly avoid. On the other hand, it brings about several highly desirable results.

Since each agency is subject to the supervision and control of an authority just above it, as well as still higher authorities, there is not the looseness in administration that almost inevitably results when an agency, as for example a county assessor in many parts of the United States, is responsible only before the law, but has no responsibility to any supervisory or controlling authority. Unquestionably much of the freedom from "graft" and corruption in Germany is due primarily to the control exercised by superior authorities. Efficiency and honesty in administration are greatly aided by a proper organization for supervision, which will cover points that law alone cannot reach. Thus, a writ of mandamus may force an officer to perform an act, but no court order can force him to perform it effectively. This can only be brought about somewhere within the administrative system itself.

The administrative authority is endowed with powers equal to the tasks imposed upon it. There can be little doubt that this condition exists in Germany in all divisions of government. The administration possesses in practically every case the right to formulate policy, to draft laws, to cooperate with the legislative authority in its planning, to issue ordinances, decrees, rules, regulations and instructions. Its chief function is the execution of the laws, and it possesses powers coextensive with this function.

The administration is responsible for all its acts. This will be discussed later when the question of controls is taken up.

**Is the System Adequately Controlled?** In any governmental organization, controls must be devised in order to guarantee that the administration shall pursue policies in harmony with the will of the legislature, shall function according to law and within the law, shall act effectively and honestly, and shall deal fairly and impartially with all. To secure these ends, a number of different controls are usually established. In general these are:

Constitutional Control;

Popular Control, which usually expresses itself in the election and sometimes in the removal of administrative authorities;

Legislative Control, which may be expressed by detailed laws controlling the administration, by legislative appointments or confirmations, by making the administration responsible to the legislature, by requiring heads of the administration to appear before the legislature to answer questions, by investigations and impeachments, by control over the purse strings;

Administrative Control, expressing itself through the supervision and direction exercised by the high administrative officers within an organization, through the supervisory and consenting powers of the superior administrative authorities, by means of administrative agencies organized as courts, and by means of special disciplinary courts for administrative officers; and Judicial Control, or control by the ordinary courts.

*Constitutional Control.* Constitutional control is exercised by means of provisions defining the sphere of the administration, assigning its powers and functions, determining its relationship to other authorities, and even organizing it to a certain extent. Such provisions are found in the national Constitution of Germany and in the constitutions of the various states. When a new form of government is being established by a written constitution, it is to be expected that controls of this sort will be included; nevertheless, they should be as few and as general as possible, in order to avoid the dangers of rigidity, impracticability, and consequent extra-constitutional adjustments. This principle has been observed in the main by the German constitutions, which are, moreover, easily amended; but there is no doubt that the provisions affecting the administration have not always squared with reality, and that certain important adjustments have been made in ways not contemplated by the constitution-makers. Notable examples are: the relationship between the President of the Reich and the national Cabinet, and that between the Chancellor and the other members of the Cabinet.<sup>1</sup>

*Popular Control.* Popular control over the administration plays a very minor part in the German system. Although, as we have seen, the people have ultimate control through their sovereign power, and also have the means of changing the administrative organization or any legal or constitutional provision through the initiative, nothing but the stress of some emergency would be likely to bring about any effective exercise of these powers. Popular recall of an administrative officer is provided for in rare instances. In very few of the governmental divisions do the people elect members of the administration. Although they elect the President of the Reich, he is in reality not a member of the administration but a head of state. The election of members of the central administration would of course be incompatible with the parliamentary form of

<sup>1</sup> See Chapters IV and V.

government adopted in the nation and the states.<sup>2</sup> Since the members of the administration in the local governments are quite largely experts, popular election there would be highly undesirable. For these reasons, therefore, Germany does not as a rule directly elect her administrative authorities.

*Legislative Control.* Legislative control in Germany does not as a rule express itself in detailed statutory regulations governing the administration, as is so commonly the case in the United States. It has been shown that this is largely due to the fact that the administration is an agent of the legislature, and not a coördinate authority; hence the legislature can control the administration effectively in other ways. The chief line of control is the fact that both collectively and individually the members of the administration must have the confidence of the legislature, and must resign in consequence of a vote of lack of confidence. The legislature has a daily, direct control over the administration. This parliamentary control is chiefly useful in keeping the policies of the administration in harmony with those of the legislature. In the local governments a parliamentary control is not necessary, since the large questions of policy are not decided there.

In all governmental units in Germany, with minor exceptions, the legislative authority either directly or indirectly selects the members of the administration, or consents to the selection made by another authority. Hence the administration is not placed on an equal footing with the legislature by virtue of popular election, but is definitely subordinated to it. This fact, reinforced by the fact of parliamentary responsibility in the Reich and the states, enables the legislature to deal with the administration as an agent, rather than as a coördinate authority.

The separation of powers . . . does not mean to imply that the powers are equal; on the contrary, the legislative is the highest, the single sovereign, to which both the others . . . are absolutely subordinate. . . . The distinction between legislation, administration and adjudication . . . does not lie in a difference in the nature of

<sup>2</sup> "Only if democracy knows its limitations and does not overstep them, if it recognizes that its possibilities lie not in restraining and directing governmental action, but solely in its influence upon the appointment of leaders and in confidence in their leadership, can the parliamentary system of government be placed upon a sound foundation."—Koellreutter, *Parlament und Verfassung*, D. Jur-Zeitung, June 15, 1926.

their functions, but only in their organization. Legislation is distinguished from administration and justice through the fact that it represents the highest authority and therefore has the precedence. . . .<sup>3</sup>

Control through selection and parliamentary responsibility is not found in the subordinate units of government, where the power to select does not imply the power to dismiss or to hold responsible. Here the administration is controlled by other methods, as the local legislative bodies are not considered parliaments, but merely willing agencies for local affairs.

When governmental units have legislative or sub-legislative authorities (as is the case in all except a few units for state government), the members of the administration must appear before these or their committees in order to answer questions in respect to administration. The knowledge that one may be called on the carpet at any time is a particularly good way of preventing small abuses in administration, even when the administrator is not subject to dismissal by the inquisitorial body.

In the legislatures of the Reich and the states, committees of investigation can be formed quite easily, to inquire into any phase of administrative activity. They have rather wide powers of calling witnesses, and examining books, papers and documents. The witnesses, moreover, are not so thoroughly immune from effective inquisition as is sometimes the case in the United States.

Control over the administration through the budget is secured first in the budget bill, by the appropriation of sums for specific purposes; and again in the system of accounting and reporting, which makes every subordinate agency answerable to higher ones for all its financial transactions, and makes the central administrative authorities both politically and legally responsible until formally discharged by the legislature. There is no question as to the value of this means of control, in holding the administration to honest and efficient business methods.

Impeachment as a method of control by the legislature would seem to be not only more just but also more effective than in the United States, since the legislature merely votes the bill of impeachment, and the trial takes place before a judicial body rather

<sup>3</sup> Arndt, *Organisation der Verwaltungsbehörden*, Verwaltungsarchiv, Bd. 26, 1917-18.



than a partisan body in the form of an upper house. In the local governments impeachment as a method of control does not exist, since the hierarchy of control and the disciplinary law cover all contingencies.

The legislature in Germany is thus seen to possess a variety of controls to meet various needs; parliamentary control primarily to secure a harmony of policies between legislature and administration; interpellation, investigation, requiring the appearance before the legislature or its committees of the Cabinet or members thereof, as a means of checking up on current administration; budgetary control, enforceable through parliamentary responsibility, as a method of securing efficiency and honesty; and impeachment as a means of punishing the members of the administration for illegal action.

*Administrative Control.* Control over various aspects of administration by the administrative authorities themselves, constitutes one of the strongest features of the German system.

The fact that in general all branches of administration are brought together under a few departments headed by responsible ministers, or, in the local units, by carefully selected officers subject to superior controls, makes for a much stronger administrative control, a more consistent policy, and less duplication and waste of effort, than can be secured when administration is divided among various independent authorities. The fact that in the Reich, the states, and many of the local units of government, the head of a department is also a member of the collegial authority and responsible to it in certain respects, further knits up the threads of departmental control with the general control of the chief administrative authority, the collegial body.

An important type of control within the administration is the relation between higher and lower authorities. This control is not uniform in the different states and for the various administrative agencies, but, generally speaking, the following methods of control are used:

The lower state authorities must carry out orders from the higher ones, and must act subject to their approval. The local authorities must act in some respects subject to the approval of state agencies within the locality, and of the state authorities of superior rank. Appeals may be made by the agency affected, from the orders



or decisions of any authority to the administrative decision of the next higher authority, and usually to the highest state authorities, or, according to the nature of the controversy, to the state administrative courts.

Acts of the administrative authorities which affect individuals are also subject to examination by the next higher authority, in the capacity of administrative courts, or by special administrative courts. The institution of administrative courts thus serves the double purpose of checking abuse or mismanagement within the administration, and of protecting the individual against unjust or unwarranted administrative action.

The chief fault of the administrative court system at present is its lack of uniformity in the various states,<sup>4</sup> which, in addition to other undesirable results, may involve inequalities in the enforcement of national laws, despite all that can be done in the way of administrative ordinances, orders and directions, to secure an equal and uniform administration.

Discipline within the administration is a further method of control. The facts that the public officers in Germany are appointed as a rule for life, and that many duties and responsibilities are placed upon them beside the mere carrying out of their functions, necessitate some kind of disciplinary control. The disciplinary measures usually consist of (1) Ordinary punishments; namely, admonitions, reprimands, and fines to amounts fixed by law; (2) disciplinary transfer or suspension; and (3) removal from office. Admonitions and reprimands may be given by every superior officer to those placed under him. Fines may generally be imposed by superior authorities. Before an ordinary punishment is imposed, the officer must be given an opportunity to answer the accusation brought against him. A formal complaint before a higher instance is permitted as a legal remedy. Removal from office must be preceded by a formal disciplinary process, consisting of a written preliminary investigation and an oral hearing before a special disciplinary court. It is thus seen that although methods exist for punishing officers, adequate opportunity is given the officers to defend themselves. No summary or arbitrary punishment is permitted.

*Judicial Control.* Judicial control over the administration is very limited. Because of the doctrine of separation of powers between

<sup>4</sup> See Chapter XIV.

the administration and the courts, to the effect that, "the proper operation of an administrative act, its equality in respect to the judicial decision, and its reciprocal binding power, are only possible when the administrative authorities are independent from the courts; that is, when the ordinary courts cannot act as controlling instances over administrative authorities,"<sup>5</sup> the ordinary courts have little direct control over administration, except that which results incidentally from passing upon a case that is before them, or in respect to certain financial claims.

All in all, the controls over administration are so numerous, so varied, and so well adapted to the special purposes for which each one is designed, that—with the few exceptions which have been noted—they not only make for freedom from corruption, and harmony between the legislature and the heads of administration, but also for integration, economy, and general efficiency throughout the system.

### **Is the Administrative System Manned by a Strong Personnel?**

Any proper personnel system should meet the requirements not only of the state but also of the servants of the state. The relationship between them is a reciprocal one. Because of the nature and extent of its functions the state needs, especially for the higher services, the most able, most conscientious and best trained of its citizens. It must require that the persons employed by it shall give the best of their service and personality to the state, shall be loyal to the state, and shall be free from external political controls and corrupting influences. Moreover, it is highly desirable that the officers, particularly in the higher ranks, should be able to represent the state as adequately as private businesses are represented by their own agents. Finally, the state needs for its best functioning, the services of its employees throughout their best years, after they have attained maturity of judgment, experience, knowledge, and ability to deal with difficult situations.

To meet these conditions, those serving the state require personal and political freedom, a respected social position, proper living conditions, provision for the contingencies of life while in service, security of tenure, provision for proper living conditions after retirement, an assurance of security for their families and

<sup>5</sup> Hatschek, *Lehrbuch*, p. 12.

dependents, the ability to use their best powers and training, the ability to advance, a certain flexibility in respect to the kind of work to be done and the possibilities of transfer, and a guarantee of fair and impartial discipline.

Germany has recognized these mutual needs and has taken steps to meet them. The first, and perhaps the most important of these steps is the placing of the personnel system upon a strong legal basis through the Constitution and by law. Most of the fundamental principles of the personnel system are laid down by the national Constitution; and the national law of officers, as well as various state laws, further define the position of public officers.

The person who enters the public service in Germany is guaranteed important political rights, such as freedom of political opinion, freedom of association, and special representation; is given leave of absence when standing as a candidate for a seat in any national or state legislative assembly, and is allowed absence without special leave, for the exercise of his duties in a legislative body. He therefore has and is expected to have a voice in the policies of the country or the state, as well as in its administration. Consequently, civil servants have at times constituted one-fourth or more of the members of the Reichstag. The officer enjoys a title which is respected and esteemed by the public, is protected especially from insults, and is otherwise placed in a more favorable position than the ordinary citizen. He is appointed for life, unless the law specifies otherwise; therefore he can make governmental service his profession. His salary is adjusted with respect to certain factors in the cost of living, such as prices in a particular locality, and the number of his children. Pensions are usually provided in case of permanent physical or mental incapacity, and in case of temporary retirement due to changes in service, etc., or permanent retirement at an age fixed by law. Pensions are also secured to his dependents in case of his death. All discipline is carefully regulated in order to guard the position of the officer as well as the good of the service.

Since nearly all the higher administrative, judicial, teaching, and technical services are manned by those who are trained for them and have worked up in the service for a period of years, instead of being held by politically appointed or elected officers, scope is given for the greatest use of personal abilities and previous training. As particular educational qualifications are required for the higher

services, there is little chance of very great advancement for those entering the lower administrative services or the middle administrative services. However, since general rather than specific detailed examinations are usually required, it is often possible for persons in the lower services to make transfers to more interesting positions of about the same grade. In the higher administrative services a certain flexibility results from the fact that professors of law in the universities are eligible to the higher administrative services or to the judicial service. Because of their training it is also possible for those in the judicial service or the higher administrative services to enter into university teaching. In practice, there is a considerable interchange from university service to administrative service and *vice versa*.

In order that the state may secure persons with adequate training, the intermediate schools, the higher schools, the technical schools and the universities give the training necessary for public service. Examination for the public service is largely based upon the studies taken in these educational establishments. In many cases, after completing the prescribed course and the examinations, as for teaching, the judicial service and the higher administrative service, a person is placed on the waiting list with a salary. The educational system is thus integrated with the governmental service. Consequently, a young person can definitely decide to enter the public service and can prepare himself for it in the public educational institutions, with the virtual assurance that a suitable position will be open for him upon the successful completion of his course. In case he takes the work necessary for the judicial service, the higher administrative service, or a professorship in an institution of higher learning, he enters upon a career which may lead him to the highest ranks of the public service.

Germany has realized that in general no one can give his best to the service of the state, unless he can make public service a life profession.<sup>6</sup> Governmental service there is not primarily a stopgap until a better opportunity presents itself, an economic support during the completion of a professional education, or a preliminary practical education in governmental work, used as a stepping stone to higher things in private business. It is a lifelong profession, in which one begins on the lowest rung within his group, and gradu-

<sup>6</sup> Cf. Willoughby, *Principles of Public Administration*, p. 218.

ally works up. The returns in salary, in security, and in public esteem enable public service to compete with private business sufficiently to attract and to hold a large number of the ablest persons. In particular, there is relatively little temptation to exercise that fundamental disloyalty, scarcely avoidable when civil service fails to provide sufficiently attractive salaries and honorable careers to hold men for life, of entering government service, becoming intimately acquainted with its operations, especially the regulatory, controlling and taxing services, and finally leaving to enter private business where all that has been learned can be turned against the government.

An attitude of enthusiastic and whole-hearted service depends to a considerable extent upon opportunities of rising through merit, together with such a professional attitude, and such organization and supervision, as to reduce to a minimum the opportunities of either rising through favoritism or political preference, or profiting by dishonesty and "graft." The German system is arranged with a view to fulfilling these necessary conditions. Since appointment in the higher services depends initially upon a long course of study and severe examinations, and promotion depends upon record, there is relatively little opportunity for rising except by merit. Since the slightest dishonesty would involve the risking of a secure and honorable life career, as well as the danger of public disgrace and contempt, there is little temptation to speculation of any kind. The superior administrative and other controls even further reduce the opportunities and temptations to corruption. Added to these practical considerations, are the high professional standards and the traditions of clean administration which form an important aspect of the German civil service.

Although a new law of officers is needed, in order that it may embody various recent changes, the main principles of the personnel system at present are so satisfactory that there is no doubt of their embodiment in any future legislation.

**Is the System Powerful and Effective?** Several factors tend to make the governmental and administrative system of Germany both powerful and effective.

The first is the fact that very great powers are bestowed upon the legislatures, especially that of the Reich. Although these powers

are enumerated, they are extremely broad in scope, from the American viewpoint. The most striking example is the power possessed by both national and state legislatures to make constitutional changes without calling upon the people for confirmation. These powers, together with that of controlling the administration, enable the legislature to entrust the administration with a broad ordinance power which is exercised in such a way as to make for forcefulness and efficiency.

Another factor which should be mentioned is the centralization of legislative and administrative power, and the right of supervision exercised by the state government over all local units, as well as by the Reich over the states in respect to the many important functions to which its legislative power extends.

Most of the other criteria of good government and administration have a direct bearing upon the question of force and effectiveness. A democratic administration, however desirable in other respects, may be open to adverse criticism in this one, unless democracy is so defined, and the system of government is so organized, as to permit ability, training, experience and knowledge to function in every part so nearly as this is possible. No guarantee to this effect can be devised for the political phase of government, but the administrative side can be so guarded as to be democratic and yet efficient. Germany appears in the main to be succeeding remarkably well in democratizing her administration without sacrificing its efficiency. The merits of her organization, control, and personnel methods, which have been discussed above, all contribute to the strength and efficiency of her public administration.

We have seen certain weaknesses in the system, however, in particular the facts that the present territorial organization does not correspond to administrative needs, that there are an unnecessary number of local authorities involving heavy financial burdens, and that the control exercised by the administrative courts is not uniform.

**Conclusion.** There is no doubt that the governmental and administrative system of Germany answers in most respects to the criteria which we established at the beginning of this chapter. It is democratic without sacrifice of efficiency ; it is well organized in many ways, though in need of several important organizational changes ;

it is exceptionally well controlled from the standpoint of both politics and administration ; it is manned by a strong personnel ; and it is for the most part vigorous and efficient.

The greatest weaknesses in the system, namely : the present relationship of the states to the Reich, the administrative court situation, the lack of standard forms of municipal and local government, and the undue complexity in local government, with the heavy financial obligations thereby incurred, are being discussed very widely, and serious attempts are being made to remedy them. The removal of these weaknesses would find Germany in possession of a governmental and administrative system exceptionally well adapted in detail, as it is now in principle, to the needs of a modern and progressive democratic state. Even as it stands, the personnel, the controls, and the governmental interrelationships make the system so efficient, so vigorous, and so free from corruption, as to offer many useful lessons alike to the statesman, the administrator, and the citizen.

## APPENDIX I

### THE CONSTITUTION OF THE GERMAN REICH OF AUGUST 11, 1919<sup>1</sup>

The German people, united in its racial branches and animated by the purpose of renewing and fortifying its Reich in freedom and justice, of preserving domestic and foreign peace, and of promoting social progress, has adopted this Constitution.

#### DIVISION I

##### STRUCTURE AND FUNCTIONS OF THE REICH

##### CHAPTER I

##### REICH AND STATES

Article 1. The German Reich is a Republic.

Supreme power emanates from the people.

Art. 2. The territory of the Reich consists of the territories of the German states. Other territories can be received into the Reich by means of a national law, if their inhabitants request this by virtue of the right of self-determination.

Art. 3. The national colors are black, red, and gold. The commercial flag is black, white, and red, with the national colors in the upper inner corner.

Art. 4. The generally recognized rules of international law are valid as binding portions of the German national law.

Art. 5. Sovereignty is exercised in national affairs through organs of the Reich on the basis of the national Constitution, in state affairs through the organs of the states on the basis of the state Constitutions.

Art. 6. The Reich has exclusive legislative power over :

1. Relationships with foreign countries.
2. Colonial affairs.
3. Citizenship, freedom of travel, immigration, emigration, extradition.
4. Military organization.
5. Coinage.

<sup>1</sup> RGBl. 1919, p. 1383 ff. Translation by Frederick F. Blachly and Miriam E. Oatman.



6. Customs, as well as the unification of the customs and trade area, and freedom of commerce.
7. The post and telegraph system, including the telephone system.

Art. 7. The Reich has legislative power over :

1. Civil law.
2. Criminal law.
3. Judicial procedure, including the execution of penalties and official aid among authorities.
4. Passports and police regulations governing foreigners.
5. Poor relief and care of vagrants.
6. The regulation of the press, association, and assembly.
7. Population policy, and the protection of maternity, infancy, childhood, and youth.
8. Public health, veterinary practice, and the protection of plants against diseases and pests.
9. The labor law, insurance, and the protection of laborers and employees, as well as labor bureaus.
10. The establishment of occupational representative bodies for the domain of the Reich.
11. Provision for war veterans and their survivors.
12. The right of expropriation.
13. The socialization of natural resources and economic undertakings, as well as the production, manufacture, distribution, and price regulation of economic goods for the general economy.
14. Commerce, weights and measures, the issuing of paper money, the banking system, and the exchange system.
15. Traffic in foodstuffs and luxuries, as well as objects of everyday necessity.
16. Industry and mining.
17. Insurance.
18. Ocean navigation, deep sea and coast fishing.
19. Railways, internal navigation, traffic by means of power-driven vehicles by land, by water, and in the air, as well as the construction of highways, in so far as general traffic and national defense are concerned.
20. Theaters and cinemas.

Art. 8. The Reich also has legislative power over taxes and other sources of income, in so far as these are claimed in whole or in

part for its purposes. If the Reich claims taxes or other sources of income that have hitherto belonged to the states, it must give consideration to maintaining the vitality of the states.

Art. 9. In so far as a need exists for the issuing of uniform provisions, the Reich has legislative power over :

1. Public welfare.
2. The protection of public order and safety.

Art. 10. The Reich can, by way of legislation, establish fundamental principles for :

1. The rights and duties of religious organizations.
2. The educational system, including higher schools and scientific libraries.
3. The law of officers of all public corporations.
4. Real estate law, the division of property, the settlement and homestead system, restrictions on real estate, housing, and distribution of population.
5. The disposal of the dead.

Art. 11. The Reich can, by way of legislation, establish fundamental principles in respect to the permissibility and method of levying state taxes, in so far as these are needed to guard against :

1. Injury to the income or the commercial relationships of the Reich.
2. Double taxation.
3. Burdening the use of public means of communication and public establishments with fees which are excessive or which impede traffic.
4. Tax burdens upon imported goods in comparison with domestic products, in traffic between the individual states and parts of states, or
5. Export premiums ;

or to care for important social interests.

Art. 12. So long and so far as the Reich does not make use of its legislative power, the states retain the right of legislation. This does not hold for the exclusive legislative power of the Reich.

The national government possesses a right of veto in respect to state laws which refer to the subjects of Article 7, no. 13, in so far as the general welfare in the Reich is affected thereby.

Art. 13. National law overrules state law.

If doubts or differences of opinion exist, as to whether a provision of state law is compatible with the national law, the appropriate national or state central authorities may request the decision of a supreme court of the Reich, according to the more detailed provisions of a national law.

Art. 14. The national laws are executed by the state authorities, in so far as the national laws do not provide otherwise.

Art. 15. The national Cabinet exercises supervision in matters as to which the Reich possesses the right of legislation.

In so far as the national laws are to be carried out by the state authorities, the national government can issue general instructions. It is empowered, in order to supervise the execution of national laws, to send agents to the central authorities of the states, and, with their consent, to the lower authorities.

Upon the demand of the national Cabinet, the state governments are obliged to correct faults that have arisen in connection with the execution of national laws. In case of differences of opinion, the national Cabinet as well as the state Cabinet may seek the decision of the High Court of State, provided that no other court is specified by national law.

Art. 16. The officers entrusted with direct national administration in the states as a rule shall be citizens of such states. The officers, employees, and laborers of the national administration are to be appointed, upon their own wish, in the districts where they reside, in so far as this is possible and is not prevented by considerations of their preparation or the needs of the service.

Art. 17. Every state must have a republican Constitution. The popular representatives must be elected by the universal, equal, direct, and secret suffrage of all men and women who are citizens of the Reich, according to the fundamental principles of proportional representation. The state Cabinet must have the confidence of the representatives of the people.

The fundamental principles for election to the popular house are also valid for the local elections. However, through state law the right of suffrage may be made dependent upon a period of residence in the commune up to one year.

Art. 18. The division of the Reich into states shall serve the highest economic and cultural development of the people, with the

utmost possible consideration of the will of the population affected. Alteration of the domain of states, and the reconstruction of states within the Reich are accomplished by a law amending the Constitution.

If the states directly affected consent, only an ordinary national law is needed.

An ordinary national law is sufficient, also, if one of the states affected does not consent, but the territorial change or reconstruction is demanded by the will of the population and required by a preponderant national interest.

The will of the population is ascertained by an election. The national Cabinet orders the election, if this is requested by one-third of the electors for the Reichstag who dwell in the territory to be separated.

To decide upon territorial change or reconstruction, three-fifths of the votes cast, but at least a majority of votes of all qualified electors, are required. Even if the issue is merely the separation of a portion of a Prussian administrative district, a Bavarian county, or a corresponding administrative district in other states, the will of the people of the entire district affected is to be ascertained. If there is no geographical contiguity between the territory to be separated and the entire district, on the basis of a special national law the will of the population of the territory to be separated may be declared sufficient.

After the establishment of the consent of the population, the national Cabinet shall lay before the Reichstag a bill suitable for passage.

If a controversy arises in respect to the distribution of property in connection with consolidation or separation, upon the motion of either party the matter is decided by the High Court of State for the German Reich.

Art. 19. In so far as no other court of the Reich has jurisdiction, the High Court of State for the German Reich decides upon constitutional controversies within a state in which no court exists for disposing of them, as well as upon controversies not of a private legal nature between different states or between the Reich and a state, on the motion of either party.

The President of the Reich executes the judgment of the High Court of State.

CHAPTER II  
THE REICHSTAG

Article 20. The Reichstag consists of the delegates of the German people.

Art. 21. The delegates are representatives of the entire people. They are subject only to their consciences, and are not bound by instructions.

Art. 22. The delegates are elected by universal, equal, direct, and secret suffrage of men and women over twenty years of age, according to the fundamental principles of proportional representation. The election day must be a Sunday or a public holiday.

The national election law prescribes the details.

Art. 23. The Reichstag is elected for four years. The new election must take place at the latest on the sixtieth day after the expiration of this period.

The Reichstag assembles for the first time at the latest on the thirtieth day after the election.

Art. 24. The Reichstag convenes each year on the first Wednesday of November at the seat of the national government. The President of the Reichstag must summon it earlier when the national President or at least one-third of the members of Reichstag shall so demand.

The Reichstag decides upon the closing of the session and the date of reassembling.

Art. 25. The national President can dissolve the Reichstag, but only once for the same reason.

The new election takes place at the latest on the sixtieth day after the dissolution.

Art. 26. The Reichstag elects its president, his substitutes, and its clerks. It establishes its own order of business.

Art. 27. Between two sessions or election periods, the president and his substitutes from the last session continue to perform their official duties.

Art. 28. The president enforces the regulations and exercises the police authority in the Reichstag building.

The administration of the house is placed under him; he authorizes the receipts and expenditures of the house according to

the provisions of the national budget, and represents the Reich in all legal affairs and suits connected with his administration.

Art. 29. The proceedings of the Reichstag are public. Upon the motion of fifty members, the public may be excluded by a two-thirds majority.

Art. 30. True records of the transactions of the public sessions of the Reichstag, of a Landtag, or of their committees, remain free from all liability.

Art. 31. The Reichstag shall establish a court for examining elections. This court also decides the question whether a representative has lost his membership.

The court of elections consists of members of the Reichstag, which chooses them for the election period, and of members of the national administrative court, whom the national President appoints upon the nomination of the presidency of this court.

The court of elections renders its decisions, upon the basis of public oral proceedings, through three members of the Reichstag and two judicial members.

Outside of the hearings before the court of elections, the proceedings are to be managed by an agent of the Reich who is appointed by the national President. In other respects, procedure is regulated by the court of elections.

Art. 32. A simple majority is sufficient for a decision of the Reichstag, in so far as the Constitution does not require another proportion of votes. For the elections to be made by the Reichstag, the order of business may make exceptions.

The quorum needed for action is regulated by the order of business.

Art. 33. The Reichstag and its committees can demand the presence of the national Chancellor and of any national minister.

The national Chancellor, the national ministers, and the agents appointed by these, have the right of entry to the sessions of the Reichstag and its committees. The states are entitled to send authorized agents to these sessions, who explain the point of view of their governments upon the matters under consideration.

Upon their demand, the governmental representatives must be heard during the discussion, and the representatives of the national government even outside of the order of the day.

They are subject to the power of the chairman to keep order.

- Art. 34. The Reichstag has the right, and upon the motion of one-fifth of its members, the duty, to establish investigating committees. These committees take up in public sittings the matters which they or the persons who brought the motions consider necessary. The public can be excluded by a two-thirds majority vote of the investigating committee. The order of business regulates the procedure of the committee and prescribes the number of its members. The courts and administrative authorities are obliged to comply with the requests of these committees for information; the documents of the authorities are to be laid before them upon demand.

The provisions of the code of criminal procedure apply, so far as they are appropriate, to the investigations of these committees and of the authorities from whom they have requested information; nevertheless, the secrecy of letters, the post, the telegraph, and the telephone, remains inviolate.

- Art. 35. The Reichstag appoints a standing committee for foreign affairs, which can act even outside the sessions of the Reichstag, and after the close of the election period, or after the dissolution of the Reichstag, until the convening of the new Reichstag. The sittings of this committee are not public, unless the committee votes for publicity by a two-thirds majority.

The Reichstag also establishes a standing committee to safeguard the rights of the representatives of the people as against the national Cabinet for the time outside of the sessions and after the close of an election period, or after the dissolution of the Reichstag, until the convening of the new Reichstag.<sup>2</sup>

These committees have the rights of investigating committees.

- Art. 36. No member of the Reichstag or of a Landtag may at any time be prosecuted in court or by way of official discipline for his vote or for any expressions which he has employed in car-

<sup>2</sup> The latter part of this sentence was not contained in the Constitution as originally adopted, but was added by an amendment of December 15, 1923 (RGBL. 1923, p. 1185).

rying on his functions, or otherwise be held responsible outside of the assembly.

- Art. 37. No member of the Reichstag or of a Landtag, without the consent of the house to which the delegate belongs, can be compelled to undergo a criminal investigation, or be arrested, unless such member is apprehended while committing the act, or at the latest in the course of the following day.

The like consent is required for any other limitation upon personal liberty which interferes with the performance of the duties of a delegate.

Any criminal process against a member of the Reichstag or of a Landtag, and any imprisonment or other restraint upon his personal liberty, upon the demand of the house to which the delegate belongs, is to be suspended for the duration of the session.

- Art. 38. The members of the Reichstag and of the Landtags are entitled to refuse to give evidence concerning persons who have entrusted them with information in their capacity as deputies, or to whom they have given information in exercising their official functions, as well as concerning these facts themselves. In respect to the seizure of documents, they have the same status as persons who enjoy a legal right to refuse to give evidence.

A search or seizure within the precincts of the Reichstag or of a Landtag may take place only with the consent of its president.

- Art. 39. Public officers and members of the armed forces need no leave in order to perform their official duties as members of the Reichstag or of a Landtag.

If they are candidates for a seat in these bodies, they are to be granted the requisite leave to prepare for their election.

- Art. 40. The members of the Reichstag possess the right of free transportation on all German railways, as well as compensation according to the provisions of national law.

- Art. 40a.\* The provisions of Articles 36, 37, 38, paragraph 1, and 39, paragraph 1, are valid for the president of the Reichstag his substitutes, and the standing members and first substitute members of the committees mentioned in Article 35, even for

\* Added by a law of May 22, 1926, RGBI. I, p. 243.



the time between two sessions or election periods of the Reichstag.

The same thing holds for the president of a Landtag, his substitutes, and the standing members and first substitute members of committees of a Landtag, if according to the state constitution they may act outside of the sessions or election periods.

In so far as Article 37 provides for the coöperation of the Reichstag or of a Landtag, the committee for safeguarding the rights of the representatives of the people takes the place of the Reichstag, and in case committees of the Landtag continue to exist, the committee specified by the Landtag takes the place of the Landtag.

The persons mentioned in paragraph 1 have between two election periods the rights specified in Article 40.

### CHAPTER III

#### THE NATIONAL PRESIDENT AND THE NATIONAL CABINET

Article 41. The national President is elected by the entire German people.

Any German is eligible who has completed the thirty-fifth year of his life.

The details are provided by a national law.

Art. 42. Upon assuming office, the national President takes the following oath before the Reichstag:

I swear that I will devote my powers to the welfare of the German people, will develop its advantages, will guard it against dangers, will uphold the Constitution and the laws of the Reich, will fulfil my duties conscientiously, and will practice justice toward everyone.

The addition of a religious sanction is permissible.

Art. 43. The national President holds office for seven years. Re-election is permissible.

Before the completion of the term, the national President may be removed by popular vote, upon the motion of the Reichstag. The decision of the Reichstag requires a two-thirds majority. Through the decision the national President is suspended from the further exercise of his functions. A rejection,

by popular vote, of the motion for removal counts as a new election and is followed by a dissolution of the Reichstag.

The national President cannot be prosecuted criminally without the consent of the Reichstag.

Art. 44. The national President cannot at the same time be a member of the Reichstag.

Art. 45. The national President represents the Reich in international law. In the name of the Reich, he concludes alliances and other treaties with foreign powers. He accredits and receives ambassadors.

The declaration of war and the conclusion of peace take place through national laws.

Treaties and agreements with foreign states which concern objects of national legislation, require the consent of the Reichstag.

Art. 46. The national President appoints and dismisses the national civil servants and officers, in so far as no other provision is made by law. He can permit the right of appointment and dismissal to be exercised by other authorities.

Art. 47. The national President has supreme command over all armed forces of the Reich.

Art. 48. If a state does not fulfil the duties incumbent upon it according to the national Constitution or the national laws, the national President may compel it to do so with the aid of the armed forces.

If the public safety and order in the German Reich are seriously disturbed or endangered, the national President may take the measures necessary for the restoration of public safety and order, and may intervene if necessary with the assistance of the armed forces. For this purpose he may temporarily set aside in whole or in part, the fundamental rights established in Articles 114, 115, 117, 118, 123, 124, and 153.

The national President must immediately inform the Reichstag of all measures taken in conformity with paragraph 1 or paragraph 2 of this Article. The measures are to be revoked upon the demand of the Reichstag.

In case of imminent danger, the state government may take for its territory temporary measures of the nature described in paragraph 2. The measures are to be revoked upon the demand of the national President or of the Reichstag.

A national law shall prescribe the details.

Art. 49. The national President exercises the right of pardon for the Reich. National amnesties require a national law.

Art. 50. All ordinances and orders of the national President, including those within the domain of the armed forces, require for their validity countersignature by the national Chancellor or the national minister concerned. Through the countersignature responsibility is assumed.

Art. 51. In case the national President is prevented from performing his duties, he is represented at first by the national Chancellor. If the disability appears likely to endure for some time, the representation is to be regulated by a national law.

The same thing holds in case of a premature vacancy of the Presidency, until the completion of a new election.

Art. 52. The national Cabinet consists of the national Chancellor and the national ministers.

Art. 53. The national Chancellor, and upon his proposal the national ministers, are appointed and dismissed by the national President.

Art. 54. The national Chancellor and the national ministers require for the conduct of their offices the confidence of the Reichstag. Each of them must retire if the Reichstag withdraws its confidence from him by an express vote.

Art. 55. The national Chancellor presides over the Cabinet and conducts its business according to an order of business which is adopted by the national Cabinet with the consent of the national President.

Art. 56. The national Chancellor establishes the outlines of policy and bears the responsibility therefor in respect to the Reichstag. Within these outlines each national minister conducts the department of business which is entrusted to him, independently and under his own responsibility to the Reichstag.

Art. 57. The national ministers must lay before the national Cabinet for discussion and decision all bills for laws, and any other matters for which this is prescribed by the Constitution or by statute, as well as differences of opinion over questions which affect the spheres of business of several national ministers.

Art. 58. The national Cabinet makes its decisions by majority vote. In case of a tie the chairman casts the deciding vote.

Art. 59. The Reichstag is authorized to impeach the national President, the national Chancellor, and the national ministers before the High Court of State for the German Reich, for having culpably violated the national Constitution or a national law. The motion for bringing the impeachment must be signed by at least one hundred members of the Reichstag, and requires the consent of the majority prescribed for constitutional amendments. The details are to be regulated by the national law regarding the High Court of State.

#### CHAPTER IV

#### THE REICHSRAT

Article 60. A Reichsrat is established to represent the German states in the legislation and administration of the Reich.

Art. 61. In the Reichsrat every state has at least one vote. In the larger states one vote is given for each 700,000 inhabitants. A remainder of at least 350,000 inhabitants is counted as 700,000. No state may be represented by more than two-fifths of all the votes.<sup>4</sup>

German Austria, after its annexation to the German Reich, receives the right of participation in the Reichsrat with the number of votes corresponding to its population. Until that time the representatives of German Austria have advisory votes.<sup>5</sup>

The number of votes is to be established anew by the Reichsrat after every general census.

Art. 62. In the committees which the Reichsrat appoints from among its members, no state has more than one vote.

Art. 63. The states are represented in the Reichsrat through members of their cabinets. Half of the Prussian votes, however,

<sup>4</sup> As amended by law of March 25, 1921, RGBl. p. 440.

<sup>5</sup> This paragraph is not effective. On September 2, 1919, the Supreme Council of the Allied and Associated powers objected to it as in conflict with the Versailles Peace Treaty. On September 22, 1919, Germany signed at Paris an act declaring and recognizing the paragraph as null. Anschütz and some others insist, however, that since it has not been repealed by the regular process of constitutional amendment, it is still formally a part of the Constitution. See Anschütz, *Reichsverfassung*, 1926 edition, p. 201 ff., and Giese, *Reichsverfassung*, 6th ed., p. 192.

are to be cast by the Prussian provincial administrations, according to the provisions of a state law.

The states are entitled to send as many representatives to the Reichsrat as they have votes.

Art. 64. The national Cabinet must convoke the Reichsrat upon the demand of one-third of its members.

Art. 65. The chairmanship in the Reichsrat and in its committees is held by a member of the national Cabinet. The members of the national Cabinet have the right, and if requested, the duty, to participate in the deliberations of the Reichsrat and of its committees. During the deliberations, they must be heard at any time upon their request.

Art. 66. The national Cabinet and any member of the Reichsrat are entitled to place motions before the Reichsrat.

The Reichsrat regulates the conduct of its business by an order of business.

The plenary sessions of the Reichsrat are public. In accordance with provisions of the order of business, the public may be excluded from the discussion of individual subjects.

A vote is decided by a simple majority of those voting.

Art. 67. The Reichsrat is to be kept currently informed by the national ministry in respect to the conduct of national affairs. The appropriate committees of the Reichsrat shall be invited by the national ministerial departments to discussions upon important matters.

## CHAPTER V

### NATIONAL LEGISLATION

Article 68. Proposals for laws are brought in by the national Cabinet or from the body of the Reichstag.

National laws are enacted by the Reichstag.

Art. 69. The bringing in of proposals for laws by the national Cabinet requires the consent of the Reichsrat. If an agreement is not reached between the national Cabinet and the Reichsrat, the national Cabinet may nevertheless bring in the proposal, but in so doing, must state the dissenting position of the Reichsrat.

If the Reichsrat decides upon a proposition of law, to which the Cabinet does not agree, the latter must bring in the bill before the Reichstag, with an explanation of its own viewpoint.

- Art. 70. The national President must prepare<sup>a</sup> the laws which have been passed in accordance with the Constitution, and within the period of a month must publish them in the national law gazette.
- Art. 71. National laws, unless they provide otherwise, go into effect on the fourteenth day after the end of the day on which the national law gazette was published in the national Capital.
- Art. 72. The publication of a national law is to be postponed for two months if this is demanded by one-third of the Reichstag. Laws which the Reichstag and the Reichsrat declare urgent, may be published by the national President notwithstanding this demand.
- Art. 73. A law passed by the Reichstag is to be submitted to a popular referendum before its publication, if the national President so decides within one month.

A law, the publication of which is postponed upon the demand of at least one-third of the Reichstag, is to be submitted to popular referendum if one-twentieth of the qualified voters so petition.

A popular referendum is also to be held if one-tenth of the qualified voters petition for the introduction of a bill. The popular petition must be based upon a completely drafted bill. This is to be placed before the Reichstag by the Cabinet, with a statement of the government's point of view. The referendum does not take place if the initiated bill is passed without change by the Reichstag.

Only the national President can order a popular referendum in respect to the budget, tax laws, and salary regulations.

A national law regulates the procedure in respect to the popular referendum and initiative.

<sup>a</sup> That is, he must verify the text and ascertain that the laws have been passed in due legal form. See Anschütz, *op. cit.*, p. 215 ff.

Art. 74. A right of objection belongs to the Reichsrat against laws passed by the Reichstag.

The objection must be announced to the national Cabinet within two weeks after the final determination of the Reichstag, and within two more weeks at the latest the reasons must be supplied.

In case of objection, the law is laid before the Reichstag for another vote. If no agreement is reached thereby between the Reichstag and the Reichsrat, within three months the national President may order a popular referendum on the subject of disagreement. If the President does not make use of this right, the law does not go into effect. If the Reichstag has overruled the objection of the Reichsrat by a two-thirds majority, the President must publish the law within three months in the form decided upon by the Reichstag, or order a popular referendum.

Art. 75. An enactment of the Reichstag can be annulled by popular referendum only when a majority of the qualified voters participate in the vote.

Art. 76. The Constitution can be amended by way of legislation. However, decisions of the Reichstag to amend the Constitution are effective only if two-thirds of the legal membership is present and at least two-thirds of those present vote in the affirmative. Decisions of the Reichsrat in respect to amending the Constitution also require a majority of two-thirds of the votes cast. In case a constitutional amendment is to be adopted by a popular referendum upon an initiated measure, the assent of a majority of those qualified to vote is necessary.

If the Reichstag decides upon a constitutional amendment against the objection of the Reichsrat, the national President may not publish this law, if the Reichsrat within two weeks demands a popular referendum.

Art. 77. The national Cabinet issues the general administrative provisions necessary for the execution of the national laws, in so far as the laws do not otherwise provide. The consent of the Reichsrat is required to these, if the execution of the national laws belongs to the state authorities.

## CHAPTER VI

## THE NATIONAL ADMINISTRATION

Article 78. The cultivation of relationships with foreign states is exclusively a function of the Reich.

The states may conclude treaties with foreign countries, in respect to matters the regulation of which falls within the state legislative power; these treaties require the consent of the Reich.

Agreements with foreign powers in respect to changes in national boundaries are made by the Reich with the consent of the state affected. Changes in boundaries may take place only on the basis of a national law, except where a mere correction of the boundaries of uninhabited regions is concerned.

In order to assure the representation of interests arising from the special economic relationships or the geographical proximity of individual states in respect to foreign countries, the Reich decides upon the requisite arrangements and measures in agreement with the states concerned.

Art. 79. The defense of the Reich is a national function. The organization of the defensive forces of the German people will be regulated uniformly by a national law, with due consideration as to the peculiarities of the citizens of the various states.

Art. 80. Colonial policy is exclusively a function of the Reich.

Art. 81. All German commercial vessels constitute a unified merchant marine.

Art. 82. Germany constitutes a customs and trade area surrounded by a common customs frontier.

The customs frontier coincides with the foreign frontier. At the seacoast the shore of the mainland and of the islands belonging to the territory of the Reich constitutes the customs frontier. Deviations may be made for the course of the customs frontier by the sea and by other waters.

The territory of foreign states, or portions of their territory, may be annexed to the customs area by treaties or agreements.

From the customs area portions may be excluded in accordance with special requirements. The exclusion of free ports can only be abolished by a law amending the Constitution.



Sections excluded from the customs area may be annexed to a foreign customs area by treaties or agreements.

All products of nature, industry, and art, which enter into the free commerce of the Reich, may be transported over the boundaries of the states and communes, into, out of, and through them. Exceptions are permissible on the basis of a national law.

Art. 83. The customs and excise taxes are administered through national authorities.

In connection with the administration of the taxes of the Reich by national authorities, arrangements are to be provided for making possible to the states the safeguarding of special state interests in the domains of agriculture, trade, commerce, and industry.

Art. 84. The Reich provides by law for the following matters:

1. The organization of the tax administration of the states, in so far as this is necessary for the uniform and impartial execution of the national tax laws.
2. The organization and the powers of the authorities charged with supervising the execution of the national tax laws.
3. The accounting with the states.
4. Compensation for the costs of administration in connection with the execution of the national tax laws.

Art. 85. All receipts and expenditures of the Reich must be estimated for each fiscal year and placed in the budget.

The budget will be fixed by law before the beginning of the fiscal year.

The appropriations as a rule are granted for one year; in special cases they may also be granted for a longer period. Otherwise, provisions are not permissible in the national budget law, which extend beyond the fiscal year or which do not concern the receipts and expenditures of the Reich or their administration.

Without the consent of the Reichsrat, the Reichstag cannot increase appropriations in the budget bill or insert new ones.

The consent of the Reichsrat can be dispensed with according to the provisions of Article 74.

Art. 86. The national Minister of Finance accounts to the Reichsrat and the Reichstag in the following fiscal year for the application of all national receipts, so that the national Cabinet may be discharged from responsibility. The examination of accounts is regulated by national law.

Art. 87. Funds may be obtained by means of loans only in case of exceptional need, and as a rule only for expenditures for productive purposes. Such loans, as well as the assumption by the Reich of the burden of a financial guarantee, shall be effected only on the basis of a national law.

Art. 88. The post and telegraph system, including the telephone system, is exclusively a function of the Reich.

The postage stamps are uniform for the entire Reich.

The national Cabinet, with the consent of the Reichsrat, issues ordinances establishing fundamental principles and fees for the use of the means of communication. With the consent of the Reichsrat it can transfer this function to the national Minister of Posts.<sup>7</sup>

The national Cabinet, with the consent of the Reichsrat, establishes a council for advisory coöperation in matters of the post, telegraph, and telephone communication and rates.<sup>7</sup>

Only the Reich concludes agreements in respect to intercourse with foreign countries.

Art. 89. It is a duty of the Reich to assume the ownership of the railways serving general traffic, and to administer them as a unified undertaking.

The rights of the states to acquire private railways are to be transferred to the Reich upon demand.

Art. 90. With the transfer of the railways, the Reich takes over the right of expropriation and the sovereign rights of the states in respect to the railway system. In case of controversy, the High Court of State decides as to the extent of these rights.

Art. 91. The national Cabinet, with the consent of the Reichsrat, issues ordinances regulating the construction, operation, and traffic of the railways. With the consent of the Reichsrat, it can transfer this function to the appropriate national minister.

<sup>7</sup> Paragraphs 3 and 4 were repealed by the law of March 18, 1924, on the finances of the national postal service (Reichspostfinanzgesetz, RGBl. p. 287).

- Art. 92. Regardless of the inclusion of their budget and their accounts in the general budget and the general accounts of the Reich, the national railways are to be administered as an independent economic enterprise, which is to meet its own expenses, including interest and sinking fund for the railway debt, and is to build up a railway reserve fund. The amount of the sinking fund and of the reserve fund, as well as the purposes to which the reserve fund may be applied, are to be regulated by special law.
- Art. 93. The national Cabinet, with the consent of the Reichsrat, establishes advisory councils for the national railways, for advisory coöperation in matters of railway traffic and rates.
- Art. 94. If the Reich has transferred to its own administration the railways serving general traffic in a given territory, new railways serving general traffic may be built within this territory only by the Reich or with its consent. If the building of new national railway enterprises or the alteration of existing ones affects the domain of state police functions, the national railway administration must give a hearing to the state authorities before making a decision.

Where the Reich has not yet taken over the railways into its administration, it can construct on its own account railways which are considered necessary for the general traffic or for the national defense, by virtue of a national law, even against the objection of the states whose territory is crossed, but without injury to the sovereign rights of the states; or it may transfer the execution of the construction to another party, accompanied if necessary by a grant of the right of expropriation.

Every railway administration must permit connection with other railways at their expense.

- Art. 95. Railways of general traffic which are not administered by the Reich are subject to supervision by the Reich.

The railways subject to supervision by the Reich are to be laid out and equipped according to uniform fundamental principles established by the Reich. They are to be maintained in safe condition for operation, and are to be developed in correspondence with the demands of traffic. The service and development of passenger and freight traffic shall correspond with requirements.

In the supervision of rates, the object shall be to establish uniform and low railway charges.

Art. 96. All railways, even those not serving general traffic, must fulfil the requirements of the Reich for the use of railways for purposes of national defense.

Art. 97. It is a duty of the Reich to take over into its ownership and administration the waterways serving general traffic. After the transfer, waterways serving general traffic can be constructed or developed only by the Reich or with its consent.

In connection with the administration, the development, or the new construction of waterways, the needs of agriculture and of water economy are to be safeguarded in agreement with the states. Consideration is also to be given to their development.

Every waterway administration must permit connection with other internal waterways at the cost of the latter. The same obligation exists for the establishment of a connection between internal waterways and railways.

With the transfer of the waterways, the Reich acquires the power of expropriation, control over rates, and police power over streams and shipping.

The functions of the waterways construction associations in respect to the development of natural water courses in the districts of the Rhine, the Weser, and the Elbe, are to be transferred to the Reich.

Art. 98. For coöperation in matters of waterways, advisory councils are to be established in connection with national waterways, according to the detailed ordinances of the national Cabinet, subject to the consent of the Reichsrat.

Art. 99. Charges may be collected on natural waterways only for such works, equipment, and other arrangements as are meant to facilitate traffic. In connection with state and communal enterprises they may not be more than the necessary costs of construction and maintenance. The costs of construction and maintenance for undertakings which are not intended exclusively to facilitate traffic, but also to further other purposes, may be met by fees on shipping only to a proportionate amount. Interest and sinking funds on the capital invested are considered as costs of construction.

The provisions of the foregoing paragraph apply to charges collected for artificial waterways, as well as for accommodations connected with these, and harbor accommodations.

In the domain of internal shipping, the entire cost of a waterway, a stream district, or a waterway system, may be taken as the basis for the fixing of rates.

These provisions hold also for rafting on navigable waterways.

Only the Reich may impose other or higher charges on foreign ships and their cargoes than on German ships and their cargoes.

In order to secure means for the maintenance and development of the German system of waterways, the Reich, by means of a statute, can also call upon the shipping interests for contributions by other methods.

Art. 100. In order to cover the costs of maintaining and constructing internal waterways, a national law may also call for contributions from anyone who receives benefit from the construction of dams in other ways than through navigation, if several states are concerned or if the Reich bears the costs of the enterprise.

Art. 101. It is a duty of the Reich to take over into its ownership and administration all sea signals, especially lighthouses, lightships, buoys, floats, and beacons. After the transfer, sea signals may be established or developed only by the Reich or with its consent.

## CHAPTER VII

### THE ADMINISTRATION OF JUSTICE

Article 102. Judges are independent and are subject only to the law.

Art. 103. Ordinary jurisdiction is exercised by the Reichsgericht and the courts of the states.

Art. 104. The judges of the regular courts are appointed for life. Against their will, they may be temporarily or permanently removed from office or transferred to another position or placed in retirement only by virtue of a judicial decision and only on the grounds and through the forms which the laws

prescribe. Legislation may establish age limits, upon reaching which judges shall retire.

Provisional suspension from office according to law, is not interfered with hereby.

In connection with changes in the structure of the courts or their districts, the state administration of justice can make involuntary transfers to another court or removals from office, but only subject to the payment of full salary.

These provisions do not apply to commercial judges, lay judges, or jurors.

Art. 105. Extraordinary courts are illegal. No one may be withdrawn from the jurisdiction of his rightful judge. The legal provisions concerning military courts and courts martial are not affected hereby. The military courts of honor are abolished.

Art. 106. Military jurisdiction is done away with except in time of war and on board war ships. The details are regulated by a national law.

Art. 107. Administrative courts must be established in the Reich and in the states, according to standards set by law, for the protection of individuals against ordinances and orders of the administrative authorities.

Art. 108. According to the provisions of a national law, a High Court of State for the German Reich is to be established.

## DIVISION II

### FUNDAMENTAL RIGHTS AND DUTIES OF GERMANS

#### CHAPTER I

##### THE INDIVIDUAL PERSON

Article 109. All Germans are equal before the law.

Men and women have fundamentally the same civil rights and duties.

Public-legal privileges or disadvantages of birth or of rank are abolished. Titles of nobility are considered only as a part of the name, and may no longer be bestowed.

Titles may be bestowed only if they designate an office or a calling: academic degrees are not affected hereby.

Orders and decorations may not be bestowed by the state.

No German may accept a title or an order from a foreign government.

- Art. 110. Citizenship in the Reich and in the states is acquired and lost according to the provisions of a national law. Every citizen of a state is at the same time a citizen of the Reich.

Every German has in every state of the Reich the same rights and duties as the citizens of the state itself.

- Art. 111. All Germans enjoy freedom of travel and residence throughout the Reich. Every one has the right to stop and to settle in any location within the Reich which he chooses, to acquire real estate, and to pursue any means of livelihood. Limitations require a national law.

- Art. 112. Every German has the right to emigrate to foreign countries. Emigration can be limited only by national law.

All citizens of the Reich, both within and without the territory of the Reich, have a claim upon the protection of the Reich in respect to foreign countries.

No German may be surrendered to a foreign government for prosecution or punishment.

- Art. 113. The portions of the population of the Reich speaking a foreign language may not be interfered with by legislation or administration in their free cultural development, particularly in the use of their mother tongue in education, also in connection with internal administration and the administration of justice.

- Art. 114. The freedom of the person is inviolable. Any limitation or encroachment upon personal freedom by public authority is permissible only upon a statutory basis.

Persons deprived of freedom are to be informed at latest on the following day by what authority and on what grounds the deprivation of their freedom was ordered; they shall immediately be given an opportunity to take measures opposing the loss of their freedom.

- Art. 115. The dwelling of every German is for him a sanctuary and inviolable. Exceptions are permissible only on the basis of law.

- Art. 116. An act can involve a penalty only if the penalty was fixed by law before the act was committed.

Art. 117. Secrecy of correspondence, as well as secrecy of the post, the telegraph, and the telephone, are inviolable. Exceptions can be permitted only by national law.

Art. 118. Within the limits of the general laws, every German has the right to express his opinion freely in words, writing, print, pictures, or in other ways. No relationship of labor or employment may interfere with him in this right, and no one may take action to injure him if he makes use of this right.

There is to be no censorship, but the law may provide otherwise for motion pictures.

Legal measures are also permissible to combat obscene and indecent literature and to protect the young in connection with public exhibitions and entertainments.

## CHAPTER II

### SOCIAL RELATIONS

Article 119. Marriage, as the foundation of family life and of the maintenance and the increase of the nation, stands under the especial protection of the Constitution. It rests upon the equal rights of the two sexes.

To foster the purity, soundness, and social progress of the family is a function of the state and of the communes. Families with many children have a right to claim the protection and care of the state.

Motherhood has a right to claim the protection and care of the state.

Art. 120. To educate the rising generation in physical, mental, and social fitness is the highest duty and the natural right of parents, whose activity is supervised by the political community.

Art. 121. By means of legislation, illegitimate children are to be given the same conditions for their physical, mental, and social development as legitimate children.

Art. 122. Youth is to be protected against exploitation and against moral, mental, or physical neglect. State and communes must take the necessary measures.

Compulsory measures of care can be ordered only on the basis of law.

Art. 123. All Germans have the right to assemble peaceably and unarmed without notice or special permission.



National law may require previous notice for outdoor meetings, which can be forbidden in case of immediate danger to the public safety.

Art. 124. All Germans have the right to form associations or organizations for purposes which do not contravene the criminal laws. This right cannot be limited by preventive regulations. The same provisions apply to religious associations or organizations.

According to the provisions of the civil law, every association possesses the free right to effect incorporation. This may not be refused to any association on the ground that its purpose is political, socio-political, or religious.

Art. 125. Freedom of election and secrecy of election are guaranteed. The details are provided by the election laws.

Art. 126. Every German has the right to apply in writing, with requests or complaints, to the proper authorities or to the representatives of the people. This right can be exercised by individuals as well as by several persons together.

Art. 127. Communes and communal associations have the right of self-administration within the limits of the laws.

Art. 128. All citizens without distinction are to be admitted to public offices, in accordance with the provisions of the laws and in correspondence with their capacities and achievements.

All exceptional provisions against women as public officers are set aside.

The fundamental principles of the civil service relationship are to be regulated by national law.

Art. 129. Civil servants are appointed for life unless other provision is made by law. Pensions and care for surviving dependents are regulated by law. The duly acquired rights of civil servants are inviolable. The legal route remains open for the claims of civil servants to property rights.

Only under conditions and through forms provided by law, can civil servants be suspended from office, placed in retirement temporarily or permanently, or transferred to another office with a smaller salary.

There must be given an opportunity for complaint against every disciplinary penalty, and the possibility of a rehearing.

Entries of facts unfavorable to a civil servant can be made in his personal record only after the civil servant has been given an opportunity to express himself upon them. The civil servant is to be granted an opportunity to examine his personal record.

The inviolability of the duly acquired rights and the keeping open of the legal route for property claims are especially guaranteed also to professional soldiers. In other respects their status is to be regulated by national law.

Art. 130. Civil servants are servants of the entire public, not of a party.

All civil servants are guaranteed freedom of political opinion and freedom of association.

According to the more detailed provisions of national law, the civil servants enjoy special representation as civil servants.

Art. 131. If an officer, in exercising the public authority entrusted to him, violates his official obligation toward a third party, the responsibility is borne fundamentally by the state or the public body in the service of which the officer stands. The right of redress in respect to the officer is reserved. The ordinary legal route may not be excluded.

More detailed regulation is a function of the legislative body concerned.

Art. 132. It is the duty of every German to accept honorary offices according to the provisions of the laws.

Art. 133. All citizens are obliged to perform personal services for the state and the commune according to the provisions of the laws.

Military service is regulated by the provisions of the national military law. This law also provides in how far individual fundamental rights are limited in respect to members of the armed forces, for the fulfilment of their duties and for the maintenance of discipline.

Art. 134. All citizens without distinction contribute to all public burdens in proportion to their means, according to the provisions of the laws.

## CHAPTER III

## RELIGION AND RELIGIOUS ASSOCIATIONS

Article 135. All inhabitants of the Reich enjoy full freedom of belief and conscience. The undisturbed practice of religion is guaranteed by the Constitution and remains under public protection. The general public laws on this matter remain unaffected hereby.

Art. 136. Civil and political rights and duties are neither qualified nor limited by the exercise of religious freedom.

The enjoyment of civil and political rights, and eligibility to public offices, are independent of religious belief.

No one is obliged to reveal his religious convictions. The authorities have the right to inquire into membership in a religious association only so far as rights and duties depend thereon, or a legally ordered statistical investigation makes it necessary.

No one may be compelled to perform any religious act or ceremony, or to participate in religious exercises, or to use a religious form of oath.

Art. 137. There is no state church.

Freedom of membership in religious associations is guaranteed. The combination of religious associations within the domain of the Reich is subject to no limitations.

Every religious association regulates and administers its affairs independently within the limits of the law valid for all. It chooses its officers without the intervention of the state or the civil commune.

Religious associations effect incorporation according to the general provisions of the civil law.

Religious associations remain public-law corporations in so far as they were such hitherto. Other religious associations are to be granted the like rights upon their application, if through their organization and the number of their members they offer a guarantee of permanency. If several such public-law religious associations join in a union, this union is also a corporation of public law.

The religious associations which are public-law corporations are entitled to levy taxes on the basis of the civil tax list, according to the standards of the provisions of state law.

Associations whose function is the common cultivation of a philosophy of life have the same status as religious associations.

In so far as the execution of these provisions requires further regulation, this is a function of state legislation.

Art. 138. Public contributions to religious associations, which rest upon law, contract, or special legal title, are abrogated by state legislation. The fundamental provisions for this are established by the Reich.

Property and other rights of the religious associations and religious unions, in respect to their institutions, foundations, and other property devoted to purposes of worship, education, and benevolence, are guaranteed.

Art. 139. Sunday and the recognized public holidays remain under legal protection as days of freedom from labor and of spiritual edification.

Art. 140. Persons belonging to the armed forces are to be granted the necessary free time for the fulfilment of their religious duties.

Art. 141. In so far as there exists a need for religious service and spiritual care in the army, in hospitals, penal institutions, or other public institutions, the religious associations are to be given an opportunity for religious exercises, in connection with which there is to be no compulsion.

#### CHAPTER IV

##### EDUCATION AND SCHOOLS

Article 142. Art, science, and the teaching of the same are free. The state guarantees their protection and participates in their cultivation.

Art. 143. Provision for the education of the young is to be made through public institutions. The Reich, the states, and the communes coöperate in establishing these.

The education of teachers is to be regulated uniformly for the Reich, according to the fundamental principles which apply in general to higher education.

The teachers in public schools have the rights and duties of state officers.

Art. 144. The entire school system stands under the supervision of the state ; it can share this with the communes. School supervision is exercised by technically trained officers of high rank.

Art. 145. There exists universal compulsory education. This obligation is met fundamentally by the public elementary schools with at least eight school years, and by connected continuation schools until the completion of the eighteenth year of life. Instruction and school supplies in the public elementary schools and the continuation schools are free.

Art. 146. The public school system is to be developed organically. The intermediate and higher school systems are to be based upon an elementary school, common for all. For this development, the guiding principle is the multiplicity of vocations ; and for the acceptance of a child into a specified school, it is his abilities and inclinations, not the economic and social status or the religious belief of his parents.

Within the communes, however, upon the request of those entitled to education, public elementary schools of their denomination or of their world philosophy are to be established, in so far as this does not interfere with an organized school system in the sense of paragraph 1. As far as possible the wishes of those entitled to education are to be regarded. The details are to be fixed by state legislation in accordance with the fundamental principles of a national law.

In order that those of smaller means may have access to the intermediate and higher schools, public means are to be provided by the Reich, the states and the communes ; particularly educational assistance to the parents of children who are considered qualified for education in intermediate and higher schools, until the completion of their education.

Art. 147. Private schools, as a substitute for public schools, require the approval of the state and are subject to state laws. The approval is to be bestowed, if the private schools are not inferior to the public schools in their educational purposes and equipment as well as in the scientific education of their teachers, and if they do not bring about a separation of students according to the economic possessions of their parents. The approval is to be refused if the economic and legal status of the teaching force is not sufficiently guaranteed.

Private elementary schools are only to be permitted if for a minority of those entitled to education, whose wish is to be observed according to Article 146, paragraph 2, a public elementary school of their religion or of their world outlook does not exist in the commune, or if the educational administration recognizes a special pedagogical interest.

Private preparatory schools are abolished.

The present law remains in effect, in respect to private schools which do not serve as substitutes for public schools.

Art. 148. In all schools special attention is to be given to moral development, education in citizenship, and personal and vocational efficiency, in the spirit of German culture and of international conciliation.

In connection with instruction in the public schools, care is to be taken not to wound the feelings of those who hold other views.

Civics and labor are subjects of instruction in the schools. At the end of his compulsory school period every student receives a copy of the Constitution. The public educational system, including the public higher schools, shall be developed by the Reich, the states and the communes.

Art. 149. Religious instruction is a regular teaching subject of the schools, with the exception of the non-confessional (secular) schools. Its teaching is regulated within the limits of the school laws. Religious instruction is imparted in accordance with the fundamental principles of the religious organization concerned, without prejudice to the supervisory right of the state.

The imparting of religious instruction and the performance of religious exercises remain optional with teachers; attendance at religious instruction and participation in religious ceremonies and solemnities remain optional with those whose duty it is to decide upon the religious education of the child.

The theological faculties in the higher schools continue to exist.

Art. 150. Monuments of art, history, and nature, as well as natural beauties, enjoy the protection and care of the state.

It is a concern of the Reich to guard against the removal of German art treasures to foreign countries.

CHAPTER V  
THE ECONOMIC LIFE

Article 151. The ordering of the economic life must correspond to the fundamental principles of justice, with the purpose of guaranteeing to everyone an existence worthy of mankind. Within these limits the economic freedom of the individual is to be safeguarded.

Legal compulsion is only permissible in order to realize threatened rights or to serve preponderant requirements of general welfare.

Freedom of commerce and of industry is guaranteed in accordance with provisions of the national laws.

Art. 152. In economic intercourse, freedom of contract prevails in accordance with the provisions of the laws.

Usury is forbidden. Legal transactions which trespass against good morals are void.

Art. 153. Property is guaranteed by the Constitution. Its content and its limitations are defined by the laws.

Expropriation can take place only for the general welfare, and upon statutory grounds. It is accompanied by adequate compensation, unless a national law provides otherwise. The legal route in the regular courts is to remain open for suits regarding the amount of compensation, in so far as national laws do not provide otherwise. Expropriation by the Reich as against states, communes, and public utilities, can take place only when compensation is paid.

Property involves obligations. Its use shall at the same time be a service to the general welfare.

Art. 154. The right of inheritance is guaranteed according to the provisions of the civil law.

The share of the state in an inheritance is determined according to the laws.

Art. 155. The distribution and the use of land are supervised by the state in such a way as to prevent misuse, and to serve the purpose of guaranteeing to every German a healthful dwelling, and to all German families, especially to those with many children, a homestead for residence and productivity corresponding with their needs. In the homestead law which is to be passed, especial attention is to be given to those who have taken part in war.

Landed property the acquisition of which is necessary in order to meet the need for dwellings, to develop settlement and reclamation, or to encourage agriculture, can be expropriated. Entails are to be dissolved.

The cultivation and use of the soil is a duty of the land owner toward the community. The increase in value of land which takes place without the application of labor or capital to the property shall be utilized for the benefit of the community.

All natural resources, and all economically useful natural power, stand under the supervision of the state. Private royalties are to be transferred to the state by means of law.

Art. 156. The Reich can take over by law as public property, without prejudice to compensation and with suitable application of the provisions which hold for expropriation, private economic enterprises suitable for socialization. It can engage itself, the states, or the communes in the administration of economic enterprises and associations, or it may secure for itself in other ways a controlling influence upon them.

In case of urgent need the Reich can also unite by law economic enterprises and associations on a basis of self-administration, for socio-economic purposes, with the object of securing the coöperation of all productive elements of the population, of giving a share in the administration to employers and employees, and of regulating the production, manufacture, distribution, consumption, price fixing, importation, and exportation of economic goods according to the fundamental principles of social economy.

The coöperative industrial and economic associations, and unions of these, upon their demand are to be incorporated into the socialized economic system, with due consideration of their organization and their peculiar nature.

Art. 157. The forces of labor stand under the especial protection of the Reich.

The Reich is to adopt a uniform labor law.

Art. 158. Intellectual labor, the rights of authors, inventors, and artists, enjoy the protection and care of the Reich.

The products of German science, art, and technology are to be given recognition and protection in foreign countries, also, by international agreement.



- Art. 159. Freedom of association in order to protect and develop conditions of labor and economic life is guaranteed for everyone and for all occupations. All agreements and measures which attempt to limit or to impede this freedom are contrary to law.
- Art. 160. Anyone who stands in a relationship of service or labor as an employee or a laborer has a right to the free time necessary for exercising his civil rights, and in so far as the business is not materially injured thereby, for filling such honorary public offices as shall be bestowed upon him. The law provides in how far he may still claim his income.
- Art. 161. The Reich establishes a comprehensive insurance system, with the dominant coöperation of the insured, in order to maintain health and working capacity, to protect motherhood, and to provide against the economic consequences of old age, infirmity, and the vicissitudes of life.
- Art. 162. The Reich shall advocate an international regulation of the legal status of laborers, which aims at a universal minimum standard of social rights for the entire laboring class of mankind.
- Art. 163. Without injury to his personal freedom, every German has the moral duty to use his mental and physical powers in such a way as the welfare of society demands.
- The opportunity shall be given to every German to earn his living through economic labor. In so far as he cannot be given a suitable opportunity for labor, his necessary maintenance is to be supplied. The details are to be provided by a special national law.
- Art. 164. The independent middle class in agriculture, industry, and commerce, is to be assisted by law and administration and guaranteed against oppression and destruction.
- Art. 165. Laborers and employees are to coöperate on equal terms in association with entrepreneurs, in the regulation of conditions of wages and labor, as well as in the entire economic development of the productive forces. The organizations of both sides, and their agreements, are recognized.

In order to watch over their social and economic interests, the laborers and employees have legal representation in the

labor councils of the local industry, as well as in district labor councils organized according to economic areas, and in a national labor council.

The district labor councils and the national labor council meet with the representatives of the entrepreneurs and of other interested groups of people, in district economic councils and a National Economic Council, in order to carry on common economic functions and to coöperate in the execution of the laws concerning socialization. The district economic councils and the National Economic Council are to be so organized that all considerable occupational groups are represented therein according to their economic and social importance.

Bills for laws of fundamental importance on social and economic policy, are to be laid by the national Cabinet before the National Economic Council for discussion, before they are introduced. The National Economic Council has the right to propose such bills itself. If the national Cabinet does not approve them, it must nevertheless introduce the bills into the Reichstag, while stating its own viewpoint. The National Economic Council can have the proposal supported before the Reichstag by one of its members.

Functions of control and of administration may be transferred to the labor councils and the economic councils within the fields assigned to them.

To regulate the organization and the functions of the labor councils and the economic councils, and their relationship to other social self-administering bodies, is exclusively a function of the Reich.

#### TRANSITIONAL AND FINAL PROVISIONS

Article 166. Until the establishment of the national administrative court, the Reichsgericht takes its place in the organization of the court for examining elections.

Art. 167. The provisions of Article 18, paragraphs 3 to 6, first go into effect two years after the adoption of the national Constitution.<sup>8</sup>

<sup>8</sup> A law of November 20, 1920 (RGBl. p. 1987), adds to this article some paragraphs referring to the proposed state of Upper Silesia. Since the formation of this state was rejected at an election held on September 3, 1922, these paragraphs have no application, and are therefore not given here.

Art. 168. Until the passage of the state law provided for in Article 63, or at latest until July 1, 1921, all the Prussian votes in the Reichsrat may be cast by members of the Cabinet.<sup>9</sup>

Art. 169. The date when the provisions of Article 83, paragraph 1, shall go into effect is set by the national Cabinet.

For a reasonable transition period, the levying and administration of customs and excise taxes can be left to the states, upon their wish.

Art. 170. The post and telegraph administrations of Bavaria and Württemberg are transferred to the Reich at the latest by April 1, 1921.

If no agreement has been reached by October 1, 1920, on the conditions of the transfer, the High Court of State decides.

Until the transfer, the former rights and duties of Bavaria and Württemberg remain in effect. The traffic by post and telegraph with neighboring foreign states is regulated, however, exclusively by the Reich.

Art. 171. The state railways, waterways, and sea signals are transferred to the Reich at latest by April 1, 1921.

If no agreement has been reached by October 1, 1920, on the terms of the transfer, the High Court of State decides.

Art. 172. Until the national law upon the High Court of State goes into effect, its functions are exercised by a Senate of seven members, of whom the Reichstag chooses four and the Reichsgericht three from among its own members. It regulates its own procedure.<sup>10</sup>

Art. 173. Until the passage of a national law according to Article 138, the present state contributions to religious associations, based on law, contract, or special legal titles, remain in effect.

Art. 174. Until the passage of the national law provided for in Article 146, paragraph 2, the present legal status prevails. The law must pay especial attention to the portions of the Reich in which there are legally established schools not separated according to religious belief.

<sup>9</sup> As amended by law of August 6, 1920 (RGBl. p. 1565). The Prussian law distributing the votes was passed on June 3, 1921 (GS. p. 379).

<sup>10</sup> The national law organizing the High Court of State was passed on July 9, 1921 (RGBl. p. 905).

- Art. 175. The provisions of Article 109 do not apply to orders and honors which were bestowed for service during the war years 1914-1919.
- Art. 176. All public officers and members of the armed forces are to take an oath upon this Constitution. The details are to be provided by ordinance of the national President.
- Art. 177. Wherever in the existing laws the taking of an oath is prescribed with the use of a religious form of oath, the oath may also be taken legally in the following way: that the person sworn, omitting the religious form of oath, declares "I swear." In other respects the content of the oath provided in the laws remains unaffected.
- Art. 178. The Constitution of the German Reich of April 16, 1871, and the law on the provisional national authority of February 10, 1919, are repealed.

The other laws and ordinances of the Reich remain in effect in so far as they are not in conflict with this Constitution. The provisions of the peace treaty signed in Versailles on January 28, 1919, are not affected by this Constitution. In consideration of the proceedings connected with the acquisition of the island of Heligoland, a regulation may be adopted differing from Article 17, paragraph 2, in favor of its native population.<sup>21</sup>

Ordinances of the authorities which were issued in legal fashion on the ground of previous laws, retain their validity until they are set aside by ordinances or laws making other provisions.

- Art. 179. Wherever in laws and ordinances, provisions and institutions appear that are set aside by this Constitution, the corresponding provisions and institutions of this Constitution take their place. In particular, the place of the National Assembly is taken by the Reichstag, the place of the States Committee by the Reichsrat, and the place of the national President elected on the basis of the law on the provisional national authority, by the national President elected on the basis of this Constitution.

The power to issue ordinances which belonged to the States Committee according to former provisions, is transferred to

<sup>21</sup> This sentence was added by a law of August 6, 1920 (RGBl. p. 1566).

the national Cabinet ; it must have the consent of the Reichsrat for the issuing of ordinances, according to the provisions of this Constitution.

Art. 180. Until the first Reichstag assembles, the National Assembly serves as Reichstag. Until the first national President takes office, his functions are carried on by the national President elected on the basis of the law on the provisional national authority.<sup>12</sup>

Art. 181. The German people, through its National Assembly, has adopted and established this Constitution. It goes into effect on the day of publication.

<sup>12</sup> The second sentence of Art. 180 was replaced through a law of Oct. 27, 1922 (RGBl. p. 801), by the following sentence: The national President elected by the national Assembly holds office until June 30, 1925.

## APPENDIX 2

### BIBLIOGRAPHY

In the text of this work the authors have attempted to show the governmental and administrative system of Germany as a working reality. To do so involves not only a study of the constitutions, laws, and ordinances forming the legal structure for the system, but also its underlying political philosophy, its operation in practice, and the functions that it seeks to fulfil. Consequently, the bibliography will try to indicate the sources from which it is possible to secure this fourfold view.

The material on German government and administration is enormous. This is due to the fact that the system before the Revolution must always be considered, as well as the system after the war; to the fact that as a federation Germany has a multitude of state constitutions, state laws, state ordinances, and local government codes which are not found in a country with a unitary government, such as France; to the fact that the new German system has stimulated not only German writers but also writers of other countries; and, finally, to the great divergences of opinion on most of the larger political issues, which have resulted in numerous works of a polemic character.

By far the most important general bibliographical source book from 1833 to 1910 is Kayser's *Neues Bücher Lexicon* in 36 volumes. This was succeeded by the *Deutsches Bücherverzeichnis* from 1911 to date. This appears in five-year periods as follows: 1911 to 1914; 1915 to 1920; 1921 to 1925. The subject matter is arranged alphabetically, largely according to authors. A *Stich- und Schlagwortregister*, or index, accompanies the volumes. In this way it is possible to get at most of the material on a given subject. A *Halbjahrverzeichnis*, or a half-yearly list of new publications, was started in 1926. This should be consulted for material published since the last volumes of the *Deutsches Bücherverzeichnis* were issued.

Much valuable information on detailed subjects of government and administration can be found in the university and higher school dissertations. A yearly list of these appears in the *Jahresverzeichnis der an den Deutschen Universitäten und Hochschulen Erschienenen Schriften*, Vols. 1-43. As a rule the dissertations themselves contain very good bibliographies on the detailed points considered.

Another important bibliographical source for periodical literature is *Bibliographie der Deutschen Zeitschriften-Literatur, mit Einschluss von Sammelwerken und Zeitungen*, Vols. 1-55.

The American Library in Paris has issued a mimeographed volume on *The Official Publications of European Governments* (1926), which is a very important source for this material. A new publication started in January of 1928, *Monatliches Verzeichnis der Reichsdeutschen Amtlichen Druckschriften*, prepared by the Deutsche Bücherei and issued by the national Minister of the Interior, gives a monthly list of official publications. A recent volume entitled *Bibliographie der Germanistischen Zeitschriften*, by Carl Diesch, should also be consulted.

**The Fundamental Law of Germany.** The fundamental or basic laws of Germany are found in the constitutions of the Reich and of the states, and also in the various state codes for local government.

The national Constitution contains the most far-reaching provisions regarding not only the administration of the Reich, but also that of the states and to a less extent that of local governments. It is not surprising, therefore, that there is a vast quantity of material dealing with it.

The official text of the national Constitution is found in the *Reichs-Gesetzblatt* of 1919, pp. 1383-1471. Texts are in nearly all cases found in treatises and commentaries dealing with the Constitution. The most important English translations are those in McBain and Rogers, *The New Constitutions of Europe* (1922); Heinrich Oppenheimer, *The Constitution of the German Republic* (1923); René Brunet, *The German Constitution* (Translated by Joseph Gollomb, 1923); W. B. Munro and A. N. Holcombe, *And the Kaiser Abdicates*; and Otis H. Fisk, *Germany's Constitutions*. The last-named translation is open to criticism on some points; but Part Three of the book is valuable in that the provisions of the

various preliminary drafts of the Constitution of 1919 are compared or paralleled with those of the Constitution as finally adopted.

Several bibliographies dealing with the German Constitution are of value. Among these may be mentioned that of Walter Jellinek, in *Jahrbuch des Oeffentlichen Rechts der Gegenwart* (Vol. IX) in 1920; Vermeil, *La Constitution de Weimar et la Démocratie Allemande* (1923), pp. 457-62; *The German Constitution: a Bibliography*, by Rupert Emerson, *Economica*, of June, 1926, p. 17 ff.; and bibliographies in Otto Ruthenberg, *Verfassungsgesetze des Deutschen Reichs und der Deutschen Länder*; and Johannes Matern, *Principles of Constitutional Jurisprudence of the German National Republic*. None of these bibliographies, however, contains a complete list of books and articles dealing with the subject.

One cannot understand the present Constitution without some knowledge of the political thought and the political and governmental history of Germany from the beginning of the nineteenth century until the Revolution. For this purpose Friedrich Meinecke's *Weltbürgertum und Nationalstaat* (6 ed., 1922) is invaluable. Manfred Stimming, *Deutsche Verfassungsgeschichte vom Anfang des 19. Jahrhunderts bis zur Gegenwart* (1920); Fritz Hartung, *Deutsche Verfassungsgeschichte vom 15. Jahrhundert bis zur Gegenwart* (1922); Adolf Rapp, *Der Kampf um die Demokratie in Deutschland seit der grossen Französischen Revolution* (1922), are all valuable for this background.

In regard to the Revolution and the events immediately preceding the adoption of the Constitution, see: Purlitz, *Die Deutsche Revolution*, I Bd., *Die Ereignisse vom Nov. 18 bis Ende Februar 1919* (*Deutscher Geschichteskalender*, "Die Deutsche Revolution" Heft 1, 1919); Menke-Gluckert, *Die November Revolution 1918, ihre Entstehung und ihre Entwicklung bis zur Nationalversammlung* (*Deutsche Revolution*, I Bd., 1919); Walter Jellinek, *Revolution und Reichsverfassung, Bericht über die Zeit vom 9 Nov. bis zur 31 Dez. 1919* (*Jahrbuch des Oeffentlichen Rechts der Gegenwart*, Bd. IX, 1920). This is particularly valuable because it contains an extensive bibliography concerning the revolutionary period as well as much valuable bibliographic material on the Constitution. Further sources are Perels, *Der Friede von Versailles und der Deutsche Staat* (1920); Frommhold, *Die Rechtliche Bedeutung der Deutschen Nationalversammlung* (1919); Apelt,



Das Werden der Neuen Reichsverfassung (*Juristische Wochenschrift* (1919); Waldecker, *Zur Staatsrechtlichen Lage* (*Jur. Wochenschrift*, 1918 and 1919); Wieser, *Die Revolution der Gegenwart* (*Deutsche Rundschau*, 182 Bd.).

Several important constitutional projects were formulated by publicists prior to the adoption of the Weimar Constitution. These are valuable as showing the prevailing constitutional thought of the time. See particularly: Stier-Somlo, *Verfassungsurkunde der Vereinigten Staates von Deutschland* (1919); *Die Neue Reichsverfassung, Grundsätze und Umriss* (*Kölnische Zeitung*, 8., 9. and 10., January 1919, numbers 18, 23, 24); Hugo Preuss, *Der Entwurf der Deutschen Reichsverfassung, und Denkschrift zum Reichsverfassungsentwurf*, found in *Reichsanzeiger* No. 15, 20 Jan., 1919, also in *Aufträge des Reichsamtes des Innern*, Berlin (1919); and Felix Meiner, *Deutscher Geschichtskalender*, January (1919). The Preuss draft translated into English is found in O. H. Fisk's *Germany's Constitutions of 1871 and 1919* (1924). See also Kurt Löwenstein and Fritz Stern, *Entwurf einer deutsche Verfassung* (1919); A. Roth, *Entwurf einer Verfassung, etc.* (1919); *Entwurf für die Verfassung des Neuen Deutschen Reichs*, *Die Deutsche Nation*, Dezember, 1918; *Entwurf einer Verfassung des Deutschen Reichs*, issued by the constitutional committee of the association, "Recht und Wirtschaft" (1919); Hübner, *Was verlangt Deutschlands Zukunft von der Neuen Reichsverfassung?* (1919); Erich Kaufmann, *Grundfragen der Künftigen Reichsverfassung* (1919); Weck, *Die Neue Reichsverfassung* (1919); Binding, *Die Staatsrechtliche Verwandlung des Deutschen Reichs* (1919); Brecht, J. V., *Entwurf einer Reichsverfassung* (1919); Drews, *Entwurf des Allgemeinen Teils der Künftigen Reichsverfassung* (1919); and G. F. Technitz, *Entwurf einer Verfassung für das Deutsche Reich, mit einem Allgemeinen Beiwort*, 1919, found in W. Schoote, *Der Weg zur Gesetzlichkeit, die Demokratischen Verfassungen der Welt in Deutschen Wortlaut*.

Among the important political writings that had an influence upon the new constitutional system of Germany, only a few can be mentioned.

In respect to the council movement: bibliographies are found in Gutmann, *Das Rätssystem* (1922), and Gesch, *Der Reichswirtschaftsrat* (Dissertation 1926). Special studies in this field are:

Heinrich Herrfahrdt, *Die Einigung der Berufsstände als Grundlage des Neuen Staates* (1919); August Müller, *Sozialisierung oder Sozialismus* (1919); A. Friters, *Räte, Selbstorganisation und Reichsverfassung* (1919); Rathenau, *Parlament und Räte* (1919); Constantin Noppel, *Der Deutsche Rätegedanke und dessen Durchführung* (1919); A. Feiler, *Der Ruf nach den Räten* (1919).

In respect to parliamentary government: a good bibliography of the writings on the parliamentary system prior to and after the adoption of the national Constitution, is found in Stier-Somlo, *Die Verfassung des Deutschen Reichs*, 1925. The following studies should also be noted: Max Weber, *Parlament und Regierung im Neugeordneten Deutschland* (1918), and *Deutschlands Künftige Staatsform* (1919); Robert Piloty, *Das Parlamentarische System*, (2 ed., 1917); by the same author, proposals concerning an upper house, in *Archiv des Oeffentlichen Rechts*, Bd. 38, p. 103 ff.; Anschütz, *Die Parlamentarisierung der Reichsleitung*, *Deutsche Juristen Zeitung*, 1917, p. 697 ff.; Anschütz, *Parlament und Regierung im Deutschen Reich* (1918); Stier-Somlo, *Republik oder Monarchie im Neuen Deutschland* (1919); Wittmayer, *Deutsche Reichstag und Reichsregierung* (1918); H. Jordan, *Die Demokratie und Deutschlands Zukunft* (1918); W. Goetz, *Deutsche Demokratie* (1919).

Works on the territorial divisions of the Reich are: O. Ballerstedt, *Grosspreussen und Reichszertrümmerung: Der Deutsche Partikularismus und Deutschlands Zukunft* (1919); E. Kriek, *Einheitsstaat oder Bundesstaat*, *Deutsche Allgemeine Zeitung*, No. 597, of Nov. 23, 1918; Trautmann, *Territoriale Neugestaltung des Reiches und Zerstückelung Preussens*, *Preussisches Jahrbuch*, 175 Bd. (1919) pp. 72-85; Zahn, *Bayern und die Reichseinheit* (1919); Koch, *Reichseinheit, Einzelstaaten und Selbstverwaltung*, *Deutsche Allg. Ztg.* No. 79, 1919; Zorn, *Reich und Einzelstaaten im Deutschen Staatesbau der Zukunft*, "Der Tag," Feb., 1919.

For general problems consult: Anschütz, *Die Kommende Reichsverfassung*, *Deutsche Juristen Zeitung*, 1919, pp. 113-23; Delbrück, *Die Wichtigsten Fragen zur Künftigen Reichsverfassung*, *Preussisches Jahrbuch*, 175 Bd. (1919) pp. 131-36; Rathgen, *Die Künftige Verfassung des Deutschen Reichs* (1919); Weber, *Deutschlands Künftige Staatsform*; Thoma, *Deutsche Verfassungsprobleme*, *Annalen für Soziale Politik und Gesetzgebung*,

Bd. 6 (1919) pp. 409-39; E. Kaufmann, Zur Neuen Reichsverfassung, "Der Tag," No. 43, 49, 59, 1919; Hugo Preuss, Der Grundstein für Deutschlands Wiederaufbau, Deutsche Allgemeine Zeitung, No. 269, 4 Juni, 1919; Stier-Somlo, Parlamentarische Regierungsweise und Reichspräsidentschaft, Weser-Ztg., No. 139, Feb., 1919.

*Deliberations of the National Assembly.* Of fundamental importance for an understanding of the German government under the new Constitution are the deliberations of the National Assembly which established the Constitution, and the deliberations of its committee on the Constitution. The original sources of these documents are the Stenographische Berichte der Verhandlungen der Verfassungsgebenden Deutschen Nationalversammlung, Anlagen zu den Stenographischen Berichten der Verhandlungen der Verfassungsgebenden Deutschen Nationalversammlung, and in particular the report of the committee on the Constitution, Mündlicher Bericht des 8 Ausschusses (Verfassungsausschuss) über den Entwurf einer Verfassung des Deutschen Reichs. Much valuable material concerning the Assembly and the adoption of the Constitution is found in the Deutscher Geschichteskalender, in the section, Die Deutsche Reichsverfassung vom 11 August, 1919. For data as to the personnel of the Assembly, the political interests there represented, etc., consult handbooks published by the bureau of the Reichstag, by Hillger and Maas. In G. J. Ebers, Die Verfassung des Deutschen Reichs (1919), there are presented in parallel columns the Constitution as finally adopted, its form in committee readings, and the official proposals. The stenographic reports of the Assembly debates are reprinted in Heilfron's Die Deutsche Nationalversammlung im Jahre 1919.

Very few treatises and commentaries on the new Constitution of Germany have been written in English or French. The most important of the treatises either written in English or translated into English are: Johannes Mattern, Principles of Constitutional Jurisprudence of the German National Republic (1928); Heinrich Oppenheimer, The Constitution of the German Republic (1923); René Brunet, The German Constitution (Translated by Joseph Gollomb), 1923. The French title is, La Constitution Allemande du 11 août 1919. For a general discussion, see Malbone Graham's New Governments of Central Europe (1924).

Besides the work of Brunet, above listed, the most important French treatise is that of Edmond Vermeil, *La Constitution de Weimar et le Principe de la Démocratie Allemande* (1923). Another French work that should be noted is Joseph Dubois, *La Constitution de l'Empire Allemand du 11 août 1919* (1920).

There have been a great number of German works dealing with the Constitution. Some of these are in the nature of treatises and some are article-by-article commentaries. The more important of the works that might be said to be general treatises are those of J. V. Bredt, *Der Geist der Deutschen Reichsverfassung* (1924); Hubrich, *Das Demokratische Verfassungsrecht des Deutschen Reichs* (1921); Lucas, *Die Organisatorischen Grundgedanken der Neuen Reichsverfassung* (1920); Nawiasky, *Die Grundgedanken der Reichsverfassung* (1920); von Freytagh-Loringhofen, *Die Weimarer Verfassung in Lehre und Wirklichkeit* (1924); Stier-Somlo, *Die Verfassung des Deutschen Reichs vom 11 August 1919, Ein Systematischer Ueberblick* (3 ed., 1925); Leo Wittmayer, *Die Weimarer Reichsverfassung* (1922); Otto Meissner, *Die Reichsverfassung* (1919); Ablass, *Des Deutschen Reichs Verfassung* (2 ed., 1920).

The more detailed commentaries on the Constitution are those of F. Giese, *Die Verfassung des Deutschen Reichs* (6 ed., 1926); Gerhard Anschütz, *Die Verfassung des Deutschen Reichs* (4 ed., 1926); Adolf Arndt, *Verfassung des Deutschen Reichs vom 11 August 1919* (1919); Conrad Bornhak, *Die Verfassung des Deutschen Reichs, u. s. w.* (2 ed., 1921); Fritz Poetzsch, *Handausgabe der Reichsverfassung vom 11 August 1919* (1919); Walter Hardt, *Die Verfassung des Deutschen Reichs, u. s. w.* (1919); W. Coremann, *Die Verfassung des Deutschen Reichs, etc.* (1919); Alfred Korn, *Die Verfassung des Deutschen Reichs u. s. w.* (1919); Konrad Saenger, *Die Verfassung des Deutschen Reichs, u. s. w.* (1920); Georg Zöphel, *Die Verfassung des Deutschen Reichs, u. s. w.* (1920). The first five of these commentaries are by far the most important.

There are innumerable articles dealing with the Constitution. A good list of them up to January, 1920, is found in an article by Dr. Walter Jellinek, *Revolution und Reichsverfassung*, in *Jahrbuch des Oeffentlichen Rechts der Gegenwart*, 1920. Several more recent articles of importance should be mentioned: Bilfinger, *Verfassungs-*

umgehung, Archiv des Oeffentlichen Rechts, Bd. 11. Heft 1; by the same author, Studien zur Weimarer Reichsverfassung, in Zeitschrift für Oeffentlichen Recht, Bd. V, Heft 2; Doehl, Reichsrecht bricht Landrecht, Archiv des Oeffentlichen Rechts, Bd. 11, Heft 3; Hans Nawiasky, Reichsverfassungsstreitigkeiten, Archiv des Oeffentlichen Rechts, 11 Bd. 3 Heft. The most important single article on the actual operation of the government under the new Constitution is the study by Poetzsch, Vom Staatsleben unter der Weimarer Verfassung, in Jahrbuch des Oeffentlichen Rechts, Bd. XIII, 1925. A valuable study of administration by the Reich is Lassar, Reichseigene Verwaltung, in Jahrbuch des Oeffentlichen Rechts der Gegenwart, Bd. 14, 1926. Books and articles dealing with special topics will be listed later, under the special topics treated in the book.

**State Constitutions.** Every state in Germany has changed its constitution since the war, with the exception of Waldeck, which will be joined to Prussia in 1929. The constitutions of the states have been collected in a volume by Otto Ruthenberg, Verfassungsgesetze des Deutschen Reichs und der Deutschen Länder (1926). This volume contains the text of the constitutions, the amendments up to 1926, the lists of material regarding the constitutional conventions and their work, and works of all descriptions dealing with the particular state constitutions. This work is of fundamental importance for one who would study state constitutions in Germany.

The proceedings of the constituent authorities will be listed under Proceedings of Legislative Bodies.

The original sources of the state constitutions are as follows :

Anhalt—Die Verfassung für Anhalt, in Gesetzsammlung für Anhalt, 1919, p. 79 ff.

Baden—Gesetz, die Badische Verfassung betreffend, in Badisches Gesetz- und Verordnungs-Blatt, 1919, p. 279 ff.

Bavaria—Verfassungsurkunde des Freistaats Bayern, August 14, 1919, Gesetz- und Verordnungsblatt für den Freistaat Bayern, 1919, p. 531 ff.

Brunswick—Verfassung des Freistaats Braunschweig, January 6, 1922, in Gesetz- und Verordnungs-Sammlung, 1922, p. 55 ff.

Bremen—Verfassung der Freien Hansestadt Bremen, May 18, 1920, in Gesetzblatt der Freien Hansestadt Bremen, 1920, p. 183 ff.

- Hamburg—Two laws govern this constitution: Die Verfassung der Freien und Hansestadt Hamburg, January 7, 1921; and Gesetz, betreffend die Einführung der Verfassung, found in Hamburgisches Gesetz- und Verordnungsblatt, 1921, pages 9 and 20, respectively.
- Hesse—Die Hessische Verfassung, December 12, 1919, in Hessisches Regierungsblatt, 1919, p. 439 ff.
- Lippe—Verfassung des Landes Lippe, December 21, 1920, in Lip-pische Gesetz-Sammlung, 1920, p. 341 ff.
- Lübeck—Lübeckische Landesverfassung, May 23, 1920, Samml-ung der Lübeckischen Gesetze und Verordnungen, 1920, p. 114 ff.
- Mecklenburg-Schwerin—Verfassung des Freistaats Mecklenburg-Schwerin, May 17, 1920, in Regierungsblatt für Mecklenburg-Schwerin, 1920, p. 653 ff.
- Mecklenburg-Strelitz—Landesgrundgesetz von Mecklenburg-Stre-litz, January 29, 1919, and May 24, 1923. (A new constitution and executory law were passed in 1923.) These enactments are published in Ämtlicher Anzeiger für Mecklenburg-Strelitz, 1919, p. 147 ff., and the same for 1923, p. 363 ff.
- Oldenburg—Verfassung für den Freistaat Oldenburg, June 17, 1919. Since Oldenburg is divided into three non-contiguous ter-ritories, this law was published as follows: Gesetzblatt für den Freistaat Oldenburg, Landesteil Oldenburg, 1919, p. 391 ff.; Gesetzblatt für den Landesteil Lübeck, 1919, p. 515 ff.; Gesetz-blatt für den Landesteil Birkenfeld, Bd. 22, 101 Stück, p. 309 ff.
- Preussen—Verfassung des Freistaats Preussen, November 30, 1920, in Preussische Gesetzsammlung, 1920, p. 543 ff.
- Saxony—Die Verfassung des Freistaats Sachsen, November 1, 1920, Sächsisches Gesetzblatt, 1920, p. 445 ff.
- Schaumburg-Lippe — Verfassung des Freistaats Schaumburg-Lippe, February 24, 1922, in Schaumburg-Lippische Landesver-ordnungen, 1922, p. 27 ff.
- Thüringia—Verfassung des Landes Thüringen, March 11, 1921, in Gesetzsammlung für Thüringen, 1921, p. 57 ff.
- Württemberg—Die Verfassung Württembergs, September 25, 1919, in Regierungsblatt für Württemberg, 1919, p. 281 ff.

Considering the vast amount of material on the national Consti-tution, it might be anticipated that a good deal would be written on the various state constitutions. Such, however, is not the case. Except for the larger states there is almost nothing but articles in periodicals. The few important works are as follows: Hans Na-wiasky, Bayerisches Verfassungsrecht (1922); Piloty, Die Ver-fassung des Freistaats Bayeru (1919); Kurt Perels, Einige

Grundgedanken der Deutschen und Bremischen Verfassungen (1924); Duesberg, Die Lübeckische Landesverfassung (1926); K. H. Lampe, Die Reichs- und Preussische Verfassung als Einführung in die Staatsbürgerkunde (1922); William Lympius, Die Verfassung und Verwaltung im Preussen und im Deutschen Reich (1925); Preuss, Die Verfassung des Freistaats Preussen (1921); Vogels, Die Preussische Verfassung (1921 and 1927); Giese-Volkmann, Die Preussische Verfassung u. s. w. (1921 and 1926); Conrad Bornhak, Die Verfassung des Freistaats Preussen, 1921; Adolf Arndt, Die Verfassung des Freistaats Preussen (1921); Stier-Somlo, Das Preussische Verfassungsrecht (1922); Stier-Somlo, Die Verfassungsmässigen Rechte des Preussischen Staatsrats und die Folgen ihrer Nichtbeachtung, in Archiv des Oeffentlichen Rechts, Bd. 42, p. 129; Stier-Somlo, Kommentar zur Verfassung des Freistaats Preussen (1921); Hatschek, Das Preussische Verfassungsrecht, Institutionen des Deutschen Staatsrechts, (1924); Woelker, Die Verfassung des Freistaats Sachsen (1921); Loening, Die Verfassung des Landes Thüringen (1922); Vielfeld, Die Thüringischen Verfassungsgesetz (1921); Bazille, Verfassungsurkunde des Freien Volksstaats Württemberg, u. s. w. (1919); von Blume, Die Verfassungsurkunde des Freien Volksstaats Württemberg, u. s. w. (1919).

The periodical literature on the state constitutions of Germany is not large or important. Brief descriptions of, or commentaries upon, the constitutions of Anhalt, Baden, Brunswick, Hesse, Lippe, the two Mecklenburgs, Schaumberg-Lippe and Thüringia are found in Volumes 9, 10, and 12 of the *Jahrbuch des Oeffentlichen Rechts der Gegenwart*. The *Archiv des Oeffentlichen Rechts*, Vol. 39, N. F. 8, contains articles on Baden. An article on the constitution of Bavaria is found in the same publication, N. F. 9. There are several articles dealing with the constitution of Prussia, the more important of which are: Hugo Preuss, *Die Verfassung des Freistaats Preussen*, in *Deutsche Juristen Zeitung*, Vol. 25, p. 793; by the same author, *Der Streit um Artikel 45 der Preuss. Verfassung*, in *Deutsche Juristen Zeitung*, Vol. 30, p. 173; Koellreutter, *Der Streit um Article 45*, in the same volume, p. 243. There are several important articles on the constitution of Saxony, among which should be mentioned: Walter Schelcher, *Die Verfassung des Freistaats Sachsen*, in *Jahrbuch des Oeffentlichen*



Rechts der Gegenwart, Vol. 10, and an article in Volume 12 of the same periodical, by the same author, entitled Das Oeffentlichen Recht in Sachsen unter der Neuen Verfassung bis Ende 1922. Two articles on the Württemberg constitution should be mentioned: Koellreutter, Die Neue Badische und die Neue Württembergische Verfassung, eine Vergleichende Gegenüberstellung, in Archiv. des Oeffentlichen Rechts, Vol. 39, 437; Karl Sartorius, Die Entwicklung des Oeffentlichen Rechts in Württemberg in den Jahren 1920-1924, in Jahrbuch des Oeffentlichen Rechts der Gegenwart, Vol. 13. For Baden, see Thoma, Badische Gesetz des Verfassungsrechts und des Allgemeinen Verwaltungsrechts (1921). On state cabinets and legislatures, see Schanze, Die Landesregierung und ihr Verfassungsrechtliches Verhältnis zum Landtag, u. s. w., in Archiv des Oeffentlichen Rechts, Vol. 42, p. 257.

**Fundamental Laws Governing Decentralized State Governments.** A bibliography on this subject will only be given for the states discussed in the text, namely, Prussia, Bavaria, Saxony, and Württemberg.

*Prussia.* The basic laws governing the general state administration in Prussia are:

Gesetz über die allgemeine Landesverwaltung of July 30, 1883, in Gesetz Sammlung, 1883, p. 53. Several amendments have been made since the war, the most important of which are found in Preussische Gesetz Sammlung for 1921, p. 10; 1922, p. 3; 1924, p. 669. The following commentaries are valuable: Friedrichs (1910); Friedrichs, Verwaltungsrechtspflege (1920, 1921); Hue de Grais, Handbuch d. Gesetzgebung, Bd. 4; Brauchitsch (the new edition of 1925 is edited by Drews and Lassar) Die Preussischen Verwaltungsgesetze, Erster Band.

Gesetz, Betreffend die Verfassung der Verwaltungsgerichte und das Verwaltungsgerichtsverfahren of July 3, 1875, and August 2, 1880, found in Gesetzssammlung, 1880, p. 328.

Gesetz über die Zuständigkeit der Verwaltungs und Verwaltungsgerichtsbehörden of August 1, 1882, Gesetzssammlung, 1883, p. 237.

These three laws, as well as other laws affecting the decentralized state administration, are found in Brauchitsch, Die Preussischen Verwaltungsgesetze (1925).



*Bavaria.* The fundamental provisions governing the state administration in Bavaria are: Verordnung, Die Formation . . . der obersten Verwaltungs-Stellen in den Kreisen betreffend, Regierungsblatt, 1817, p. 233; Ordinance of December 21, 1908, concerning the district offices, in Gesetz- und Verordnungsblatt, 1908, p. 1121.

*Saxony.* The fundamental law governing internal state administration in Saxony is the Gesetz, die Organization der Behörden für die Innere Verwaltung betreffend, of April 21, 1873, in Gesetz- und Verordnungsblatt, 1873, p. 275.

*Württemberg.* The most fundamental provisions governing the internal administration of Württemberg are the Bezirksordnung of 1906, in Regierungsblatt, 1906, p. 442, with its amendments of 1907, Regierungsblatt 1907, p. 643; and the ordinance abolishing the county, together with Verfügung des Ministeriums des Innern, betreffend die Änderung der Vollzugsverfügung zur Gemeinde- und zur Bezirksordnung, Regierungsblatt 1924, p. 120.

**Codes for Local Self-Government.** There is no one code for local self-government in Germany. Each state has, as a rule, a code for each kind of governmental division. Prussia has a number of codes for each kind of division.

*Prussia.* The codes governing in Prussia are as follows:

Die Landgemeindeordnung für die sieben Östlichen Provinzen der Monarchie, of July 3, 1891, Gesetzsammlung, 1891, p. 233. This is the most fundamental of the provincial codes.

Landgemeindeordnung für die Provinz Schleswig-Holstein, of July 4, 1892, in Gesetzsammlung, 1892, p. 155.

Landgemeindeordnung für die Rheinprovinz of July 23, 1845, in Gesetzsammlung, p. 523.

Landgemeindeordnung für die Provinz Westfalen of March 19, 1856, in Gesetzsammlung, 1856, p. 265.

Landgemeindeordnung für die Provinz Hannover, of April 28, 1859, in Hannover. Gesetzsammlung, 1859, p. 393.

Landgemeindeordnung für die Stadt- und die Landgemeinden des Vormaligen Kurfürstentums Hessen, of October 23, 1834, in Kurhessische Gesetzsammlung, 1834, No. 181.

Landgemeindeordnung für Hessen-Nassau of April 1, 1898, in Gesetzsammlung, 1898, p. 301.

Allgemeine Fleckensordnung für Holstein of October 29, 1864. Das Gesetz über die Gemeindeverfassung in der Rheinprovinz of May 15, 1856, in Gesetzsammlung, 1856, p. 435.

- Kreisordnung für die Östlichen Provinzen of December 13, 1872, *Gesetzsammlung*, 1872, p. 661, and of March 19, 1881, *Gesetzsammlung*, p. 179.
- Kreisordnung für die Provinzen Ost-und Westpreussen, Brandenburg, Pommern, Schliessen, und Sachsen of December 13, 1872; as of March 1, 1881, *Gesetzsammlung*, p. 180.
- Kreisordnung für die Provinz Hannover of May 6, 1884 in *Gesetzsammlung*, 1884, p. 181.
- Kreisordnung für die Provinz Hessen-Nassau of June 7, 1885, *Gesetzsammlung*, 1885, p. 193.
- Kreisordnung für die Rheinprovinz of May 30, 1887, *Gesetzsammlung*, 1887, p. 209.
- Kreisordnung für die Provinz Westfalen of July 31, 1886, in *Gesetzsammlung*, p. 217.
- Kreisordnung für die Provinz Schleswig-Holstein of May 26, 1888, *Gesetzsammlung*, p. 139.
- Verordnung betreffend die Organisation der Kreis- und Distriktsbehörden sowie die Kreisvertretung in der Provinz Schleswig-Holstein of September 22, 1867, *Gesetzsammlung*, p. 1587.
- Städteordnung für die Östlichen Provinzen of May 30, 1853, *Gesetzsammlung*, p. 261.
- Städteordnung für die Provinz Westfalen of March 19, 1856, *Gesetzsammlung*, p. 237.
- Städteordnung für die Rheinprovinz of May 15, 1856, *Gesetzsammlung*, p. 406.
- Die Hannoversche Revidierte Städteordnung of June 24, 1858, *Hannov. Gesetzsammlung*, 1858, p. 141.
- Städteordnung für die Provinz Schleswig-Holstein of April 14, 1869, *Gesetzsammlung*, p. 589.
- Gesetz betreffend die Verfassung und Verwaltung der Städte und Flecken in der Provinz Schleswig-Holstein of April 14, 1869, *Gesetzsammlung*, p. 589.
- Städteordnung für die Provinz Hessen-Nassau of August 4, 1897, *Gesetzsammlung*, p. 354.
- Provinzialordnung für die Östlichen Provinzen of June 29, 1875, *Gesetzsammlung*, p. 335, and March 22, 1881, *Gesetzsammlung*, p. 233.
- Das Gesetz, über die Einführung der Provinzialordnung of June 29, 1875:
- a. In der Provinz Hannover of May 7, 1884, *Gesetzsammlung*, p. 37.
  - b. In der Provinz Hessen-Nassau of June 8, 1885, *Gesetzsammlung*, p. 242.
  - c. In der Provinz Schleswig-Holstein of May 27, 1888, *Gesetzsammlung*, p. 191.
  - d. In der Provinz Westfalen of August 1, 1886, *Gesetzsammlung*, p. 254 and October 6, 1911, *Gesetzsammlung*, p. 209.

Gesetz über die Einführung der Provinzialordnung of June 29, 1875 in der Rheinprovinz, of June 1, 1887, *Gesetzsammlung*, p. 249.

*Bavaria.* Besides the provisions in the Constitution which refer to local self-government, the following laws form the basis:

Gemeindeordnung of October 17, 1927, *Gesetz- und Verordnungsblatt*, 1927, p. 293.

Bezirksordnung, *ibid.*, p. 325.

Kreisordnung, *ibid.*, p. 335.

*Saxony.* The fundamental law for all divisions of local government in Saxony is the Gemeindeordnung für den Freistaat Sachsen. The new form embodying amendments is found in *Sächsisches Gesetzblatt*, 1925, p. 136.

*Württemberg.* The most fundamental provisions in respect to local self-government in Württemberg are the Bezirksordnung of 1906 in *Regierungsblatt*, 1906, p. 442, with amendments of 1907, *Regierungsblatt* 1907, p. 643; Verfügung des Ministeriums des Innern, betreffend die Änderung der Vollzugsverfügung zur Gemeinde- und zur Bezirksordnung, which abolished the county and assigned its functions to other authorities; Gesetz, betreffend das Gemeindewahlrecht und die Gemeindevertretung of 1919, *Regierungsblatt*, p. 25 ff.

*Baden.* The basic law governing the organization of the local governments in Baden is Gesetz, die Organisation der Innern Verwaltung betreffend, of October 24, 1863, *Regierungsblatt*, p. 399, which has been greatly amended by Gesetz, Das Badische Verwaltungsgesetz betreffend of March 28, 1919, and April 4, 1919, in *Gesetz- und Verordnungsblatt*, p. 247. The new communal code of 1921 is found in *Gesetz- und Verordnungsblatt* 1921, p. 347; amended, *ibid.*, 1922, p. 183.

*Hesse.* The basic law governing the county and province administration is Gesetz, betreffend die innere Verwaltung und die Vertretung der Kreise und der Provinzen of July 8, 1911, in *Regierungsblatt*, p. 324, as amended by a law of 1919, *Regierungsblatt*, 1919, p. 164. Hesse has a special code for cities and another for rural communes, as follows: Gesetz, die Städteordnung betreffend of July 8, 1911, *Regierungsblatt*, p. 367, as amended by Gesetz, die Abänderung der Städteordnung vom 8 Juli 1911 betreffend, of

April 15, 1919, *Regierungsblatt*, 1919, p. 137; Gesetz, die Landgemeindeordnung betreffend, of July 8, 1911, *Regierungsblatt* 1911, p. 443, as amended by Gesetz die Abänderung der Landgemeindeordnung vom 8 Juli, 1911, betreffend, of April 15, 1919, *Regierungsblatt*, 1919, p. 150; Gesetz über die Wahlen der Stadtverordneten u. s. w., *Regierungsblatt*, 1922, p. 245.

**Statutory Law of the Reich.** The original source of statutory law in the Reich is the *Reichsgesetzblatt*, which appears in two parts. Part II contains the following:

1. Treaties and international agreements, as well as agreements between the Reich and the states.
2. In so far as they are published as laws, also publications which concern:
  - The national budget, and lists of the local treasuries.
  - The protection of trade rights and copyrights.
  - The internal affairs of the army.
  - The railway system, shipping, canals.
  - Coal and potash economics, as well as the burdening of industry.
  - The internal affairs of the Reichstag and the National Economic Council.
  - The national bank, the private banks, the German Gold Discount Bank and the Bank for the German Industrial Obligations.

All of the remaining laws are contained in Part I.

Several collections of national laws are of value. Among them should be mentioned:

Marshall von Bieberstein, *Verfassungsrechtliche Reichsgesetze* (1924).

Fritz Stier-Somlo, *Sammlung in der Praxis oft angewandten Verfassungs- und Verwaltungsgesetze und Verwaltungsverordnungen*, 3 Aufl., 1923.

H. Triepel, *Quellensammlung zum Deutschen Reichsstaatsrecht*, 3 Aufl., 1922.

Carl Sartorius, *Sammlung von Reichsgesetzen und Verordnungen Staats- und Verwaltungsrechtliche Inhalts*, 1927.

See also, *Das gesamte Deutsche und Preussische Gesetzgebung-Material* (1925), and *Sammlung von Wichtigen Gesetzesabdrucken und Verordnungen von Reich und Staat* (prepared by J. Meincke).

There is no codification of the German national laws at present, although one is now in the process of preparation. The yearly indexes of the laws must therefore be consulted. Some little help can be had from A. Ebner, *Wegweiser durch die Deutsche Reichsgesetzgebung* (2 ed., 1925); and K. Fechner, *Führer durch die Gesetzgebung und Staatseinrichtung des Deutschen Reichs und Preussens*, 6th edition, 1925.

Numerous commentaries exist on nearly all of the important national laws. Commentaries to most of the more important laws are found in the *Guttentagsche Sammlung Deutscher Reichsgesetze*, which is a series of useful small volumes, each giving the text of a particular law, commentaries, and an index. A list of the commentaries to the more important laws used in this book will be found under special subjects, as for instance the budget law, the tax code, etc.

The *Alphabetisches Handwörterbuch der Reichs- und Preussischen Gesetze, Verordnungen, etc.*, 1927, is useful for finding the laws, ordinances, and ministerial orders of the Reich and Prussia dealing with specific subjects.

**State Statutes and Ordinances.** The statutory law, ordinances, and sometimes other official documents, are found in yearly publications which bear different names in the different states. The title changes in a few instances from time to time. Only the present titles of these will be given. The laws are not as a rule codified. In a few cases there have been collections of the laws published privately. Where this is true, it will be shown. The list is as follows:

Anhalt—*Gesetzsammlung für Anhalt.*

Contains laws, ordinances, etc.

Baden—*Badisches Gesetz- und Verordnungs-Blatt.*

Contains the laws, ordinances, and publications of the ministries.

Bavaria—*Gesetz- und Verordnungs-Blatt für den Freistaat Bayern.*

Contains the laws, ordinances, etc. The laws, ordinances, and other administrative provisions from 1595 to 1919, vols. 1-42, are contained in Karl Weber's *Neue Gesetz- und Verordnungs-Sammlung für das Königreich Bayern*. A complete index of this work to that date was issued in 1904.

Bremen—*Gesetzblatt der freien Hansestadt Bremen.*

Contains laws, ordinances and official publications.

Brunswick—Braunschweigische Gesetz- und Verordnungssammlung.

Contains laws, ordinances, etc.

Hamburg—Gesetzsammlung der Freien und Hansestadt Hamburg.

Contains the laws and ordinances and the publications of the individual authorities.

Hesse—Hessisches Regierungsblatt.

Contains laws and ordinances.

Lippe—Lippische Gesetz-Sammlung.

Contains laws, ordinances, and orders.

Lübeck—Sammlung der Lübeckischen Gesetze und Verordnungen.

Contains laws and ordinances.

Mecklenburg-Schwerin—Regierungsblatt für Mecklenburg-Schwerin.

Contains laws, ordinances, and official publications. The Amtliche Beilage zum Regierungsblatt für Mecklenburg-Schwerin contains information in respect to consuls, officers, etc.

Mecklenburg-Strelitz—Offizieller Anzeiger für Gesetzgebung und Staatsverwaltung.

Contains laws, ordinances, and other official publications.

Oldenburg—Gesetzblatt für den Freistaat Oldenburg.

This is published in three sections; for Landesteil Oldenburg, Landesteil Lübeck, Landesteil Birkenfeld.

Prussia—Preussische Gesetzsammlung.

Contains laws and ordinances.

A valuable pathfinder (Wegweiser) through the Prussian laws is A. Ebner's Wegweiser durch die Preussische Gesetzgebung, of which new editions appear from time to time. See also K. Fechner, listed above under national laws.

Several collections of the Prussian laws exist. Among the most important are the following: Stier-Somlo, Sammlung Preussischer Gesetze staats- und verwaltungsrechtliches Inhalts, 1921; by the same author, Sammlung Preussischer Verwaltungsgesetze, 1914 and 1923; by the same author, Sammlung in der Praxis oft angewandter Verfassungs- und Verwaltungsgesetze und Verordnungen des Deutschen Reichs, mit preuss. Ausführungsgesetzen und Verordnungen, 3 ed. 1923.

Saxony—Sachsisches Gesetzblatt.

Contains laws and ordinances.

Schaumburg-Lippe — Schaumburg-Lippische Landes-Verordnungen.

Contains both laws and ordinances.

Thüringia—Gesetzsammlung für Thüringia.

Contains laws and ordinances.

Waldeck—Waldeckische Regierungs-Blätter.

Contains both laws and ordinances.

Württemberg—Regierungsblatt für Württemberg.

Contains laws and ordinances.

### **Governmental and Departmental Publications of the Reich.**

The chief source book in English of the official publications of Germany is *Official Publications of European Governments*, published by the Reference Service on International Affairs, American Library in Paris. A new publication which was started in January, 1928, called the *Monatliches Verzeichnis des Reichsdeutschen Amtlichen Druckschriften*, appears to be valuable for listing new official publications. The *Handbuch für das Deutsche Reich* contains a fair list of Reich publications.

#### *Ministry of Finance*

Reichsbesoldungsblatt. This contains notices regarding salaries of public officers.

Reichssteuerblatt. This contains laws, decrees, rulings, communications, and scientific articles in the whole field of taxation.

Reichszollblatt. This contains laws, decrees, and information concerning customs and excise taxes.

Amtsblatt der Reichfinanzverwaltung. Contains important ministerial orders, information in regard to the staff of the Ministry of Finance and of the authorities under its jurisdiction.

#### *Ministry of the Interior (Central Administration)*

Reichsgesetzblatt. This is the successor to the *Bundesgesetzblatt des Norddeutschen Bundes*, and runs from 1871 to date. It contains laws, international conventions, decrees, rulings, etc.

Reichsministerialblatt. Zentralblatt für das Deutsche Reich. Contains the ordinary executive orders and other administrative provisions, and the appointments and resignations of the higher officers of the Reich.

Deutscher Reichsanzeiger und Preussischer Staatsanzeiger. In the official part are found administrative orders, information about officers, decrees, notices, and official communications. It also contains notices of court cases, government tenders, redemption of bonds, balance sheets of limited companies, and various other information.

#### *Ministry of Economics*

Deutsches Handels-Archiv. This periodical is devoted to trade and commerce and is issued fortnightly.

Handbuch für die Deutsche Handelsmarine. Contains shipping laws, lists of shipping authorities, lists of ships, charts, agreements.



Entscheidungen des Oberseeamts und der Seeämter des Deutschen Reichs. This contains the more important decisions of these administrations, in so far as they are of general interest.

Nautisches Jahrbuch. Contains ephemerides and tables for the current calendar year for the determination of the time, longitude and latitude at sea, according to astronomical observations. Is issued annually, from six months to one year before the beginning of the calendar year which it concerns.

### *Statistical Bureau*

Statistik des Deutschen Reichs. The Statistical Bureau is the central organ for the publication of all statistics of the Reich. This publication has appeared since 1873, and is issued in separate volumes at no stated intervals.

Vierteljahrshefte zur Statistik des Deutschen Reichs. This contains extracts and provisional information for the above publication.

Monatliche Nachweiser über des Auswärtigen Handel Deutschlands. This contains monthly statements regarding the foreign trade of Germany.

Statistisches Jahrbuch für das Deutsche Reich. This deals with all important economic matters, population, agriculture, commerce, and trade, prices, salaries, labor market, credit system, insurance, finance, education, administration of justice, army, navy, elections, etc. An annex entitled "International Surveys" contains summaries of economic conditions abroad.

Wirtschaft und Statistik. This contains the most recent data concerning German and foreign statistics, presented in articles and notices, with diagrams.

Statistik der Güterbewegung auf Deutschen Eisenbahnen. Statistical data concerning the freight traffic within the Reich and with reference to certain traffic districts abroad.

### *Ministry of Labor*

Reichsversorgungsblatt. This contains official information regarding social welfare, assistance to war invalids and dependents of those killed in the war, etc.

The National Insurance Inspection Office for Private Insurance, under this ministry, issues Veröffentlichungen des Reichsaufsichtsamts für Privatversicherung, which contains information regarding German private insurance companies and foreign insurance businesses in the Reich, yearly business reports, and awards of the highest courts. This appears two or three times each year.



The National Insurance Office, under this ministry, publishes each month the *Amtliche Nachrichten des Reichsversicherungsamts*, containing rulings, communications, and notices concerning accidents, sickness, invalidity, and other insurance relations. *Entscheidungen und Mitteilungen des Reichsversicherungsamts*. Contains the decisions and communications of the Insurance Office of the Reich.

The Welfare and Assistance Court of the Reich, under this ministry, issues the *Entscheidungen des Reichsversicherungsgesichts*, containing the decisions, awards, and findings in matters of social relief. Irregular.

The Emigration Bureau of the Reich issues fortnightly the *Nachrichtenblatt der Reichsstelle für das Auswanderungswesen*, containing notices of the Bureau, and articles and information dealing with emigration in all parts of the world.

#### *Health Department (Reichsgesundheitsamts)*

*Veröffentlichungen des Reichsgesundheitsamts*. Weekly. Contains information on laws, decrees, communications regarding human and animal diseases, foodstuff investigations, etc.

*Arbeiten aus dem Reichsgesundheitsamt*. Publications concerning experiments and investigations, scientific treatises, etc. Published irregularly.

*Medizinal-Statistische Mitteilungen aus dem Reichsgesundheitsamt*. Results of statistics concerning causes of death in the Reich, with tables and text. Published irregularly.

*Jahresberichte über die Verbreitung von Tierseuchen im Deutschen Reich*. Yearly. Contains important results of work on cattle diseases, statistics, tables, communications concerning the causes and spread of diseases, serum injections, police orders, etc. The issue of 1924 covers the years 1920-21.

#### *Patent Department*

*Verzeichnis der in Vorjahre erteilten Patente*. Yearly. This is a list of the patents granted in the preceding year, arranged alphabetically and chronologically.

*Blatt für Patent-Muster-und Zeichenwesen*. This bulletin of patents, designs, and trademarks contains the proceedings in matters pertaining to patents and designs as well as proceedings in trademark law which are of importance in trade circles, particularly laws, provisions, and decisions at home and abroad. Monthly.

*Das Warenzeichenblatt*. This is a trademark gazette. Published fortnightly.

*Ministry of Food and Agriculture*

Berichte über Landwirtschaft. This contains publications concerning agricultural cultivation, field and plant cultivation, soil treatment and agricultural economics, and experiments and investigations. Appears when material is collected.

The Biological Institute for Agriculture and Forestry, under the above ministry, issues the following publications:

Nachrichtenblatt für den Deutschen Pflanzenschutzdienst. Monthly.

This contains communications concerning the technical value of experiments in regard to field and vegetable cultivation.

Bibliographie der Pflanzschutzliteratur. Yearly. This is a bibliography of the literature concerning plant protection.

*Postal Ministry*

Amtsblatt des Reichspostministeriums. Contains orders, tariffs, communications, and information concerning domestic and foreign matters pertaining to the jurisdiction of the postal authorities. Published twice weekly.

Archiv für Post und Telegraphie. Contains articles on postal and telegraphic subjects. Published six times a year.

Reichskursbuch. This is a railway and postal guide. Appears June 1 and October 1 of every year.

Postleithilfe. Contains railway time tables, steamship connections, tramways, electrical lines, and postal communications. Appears June 1 and October 1 of every year.

Verzeichnis der Postanstalten und Eisenbahnstationen in Deutschland und der Wichtigen Orte in Ausland. Yearly. Contains list of postal bureaus and railway stations in Germany and important places abroad.

Verkehrsnachrichten für Post und Telegraphie. Weekly. Contains all innovations and modifications in regard to posts, telegraphs, air-mail, and articles and comments concerning new installations at home and abroad.

*Ministry of Communications*

Reichs-Verkehrs Blatt. Contains orders, communications, and notices for railway, waterway, air, and automobile traffic. Published occasionally.

*Defense Ministry*

Das Heeres Verordnungsblatt. This is the official journal of the army administration. Published three to five times a month.

Das Marine-Verordnungsblatt. This is the official journal of the naval administration. Published irregularly.

Veröffentlichungen aus dem Gebiet des Militärsanitätswesens. Contains articles concerning various diseases and investigations.

Zeitschrift für Veterinarkunde. Monthly. This periodical for veterinary science contains technical articles with a special view to military veterinary needs.

**Official Publications of the States Other than Collected Laws and Legislative Reports.** Consult Monatliches Verzeichnis der Reichsdeutschen Amtlichen Druckschriften for new publications, Vol. I, 1928.

*Prussia—Ministry of State*

Handbuch über den Preussischen Staat. Contains governmental and statistical information on Prussia. Gives the composition of the Landtag and the Staatsrat and detailed information concerning the officers of the state. Published yearly.

Finanzministerialblatt. Fortnightly. The official part contains important ministerial orders and rulings. In the unofficial part are articles on trade, finance, etc.

Preussisches Besoldungsblatt. Weekly. Contains orders concerning salaries of officers, employees, and workmen.

Zeitschrift für Bauwesen. Quarterly. Contains contributions from all fields of the building business, as well as communications concerning articles that have appeared in technical journals.

Zentralblatt der Bauverwaltung. Weekly. Important orders of the government of the Reich and state, and information concerning personnel and the construction of buildings.

Denkmalpflege und Heimatschutz. Quarterly. Orders and articles regarding the preservation of works of art and places and objects of interest.

*Prussia—Ministry of Commerce and Trade*

Ministerialblatt der Handels- und Gewerbsverwaltung. Contains communications concerning the ministerial staff, and important ministerial orders for the general administration of matters involving commerce and industry. Appears occasionally.

Zeitschrift für das Berg-Hütten und Salinenwesen im Preussischen Staate. Contains official, technical, economic, and juridical material in regard to coal, metal, and salt mining; also articles on these subjects. There are from four to six numbers with articles, and three statistical numbers, per year.

*Prussia—Ministry of the Interior*

Ministerialblatt für die Preussische Innere Verwaltung. Weekly. This is the official gazette for the Prussian internal administration.

*Prussia—Ministry of Justice*

Justizministerialblatt für die Preussische Gesetzgebung und Rechtspflege. Contains information concerning the officers in the administration of justice, orders, ministerial directions, and decisions of the highest courts. Published weekly.

*Prussia—Ministry of Agriculture, Domains, and Forestry*

Ministerialblatt der Preussischen Verwaltung für Landwirtschaft, Domänen und Forste. Publishes all orders of importance, together with staff information.

*Prussia—Ministry of Public Welfare*

Volkswohlfahrt. Fortnightly. Contains orders and communications concerning popular hygiene, matters pertaining to housing and welfare of young people, general care, and scientific papers.

*Prussia—Ministry for Science, Art, and Education*

Zentralblatt für die Gesamte Unterrichtsverwaltung in Preussen. Fortnightly. This is the chief source for educational administration in Prussia, since most of the control over education has resulted from ministerial orders rather than from laws. This contains the official orders, book reviews, etc.

*Bavaria—Ministry of the Interior*

Ministerialamtsblatt. Contains orders and notices concerning the internal administration of Bavaria. It appears as often as needed.

*Bavaria—Ministry of Finance*

Finanzministerialblatt für den Freistaat Bayern. Orders and notices concerning Bavarian financial administration. Appears as often as needed.

*Bavaria—Ministry of Justice*

Justizministerialblatt für den Freistaat Bayern. Monthly. Contains information regarding officers, orders of the state ministry, ministerial instructions, and decisions of the highest courts.

*Saxony—Ministry of the Interior*

Gemeinsames Ministerialblatt. This is the general ministerial gazette of the Saxony State Chancellory.

Ministerialblatt für die Sächsische Innere Verwaltung. Fortnightly. Contains ministerial orders, notices, and communications concerning internal administration.

*Saxony—Ministry of Justice*

Justizministerialblatt für den Freistaat Sachsen. This is analogous to the foregoing gazettes. Appears occasionally.

*Saxony—Ministry of Public Education*

Verordnungsblatt des Sächsischen Ministeriums für Volksbildung. Contains practically the same kind of material as the corresponding publication in Prussia. Appears occasionally.

*Saxony—Ministry of Finance*

Finanzministerialblatt für den Freistaat Sachsen. About the same kind of information as in Prussia.

*Württemberg—Ministry of Justice*

Amtsblatt des Württembergischen Justizministeriums. This contains rulings and notices. Published irregularly.

*Württemberg—Ministry of the Interior*

Amtsblatt des Württembergischen Ministeriums des Innern. This is analogous to the foregoing gazettes.

*Württemberg—Ministry of Churches and Schools*

Amtsblatt des Württembergischen Ministeriums des Kirchen und Schulwesens. Analogous to the preceding. Published irregularly.

*Baden—Ministry of Justice*

Justizministerialblatt für Baden. Analogous to foregoing. Published irregularly.

*Baden—Ministry of Religion and Education*

Amtsblatt des Badischen Ministeriums des Kultus und Unterrichts. Analogous to foregoing. Published irregularly.

*Thüringia—Ministry of State*

Amts- und Nachrichtenblatt für Thüringen. This is issued in two parts. Part I, Regierungsblatt, contains notices from ministries and information concerning officers. Part II, Nachrichtenblatt, contains court decisions and police orders.

*Thüringia—Ministry of Public Education*

Amtsblatt des Thüringer Ministeriums für Volksbildung. Published irregularly.

*Hesse—Joint Ministry*

Hessisches Regierungsblatt, Hauptteil und Beilage. Contains laws and other official notices and decrees. Published irregularly.

*Government of Lippe*

Staatsanzeiger für das Land Lippe. This is published twice a week.

Hamburg, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Brunswick, Oldenburg, Anhalt, Bremen, Lübeck, Waldeck, and Schaumburg-Lippe seem to publish no departmental or governmental reports other than those indicated above under the heading of Fundamental Laws.

**Court Decisions.** Although the study of court decisions bearing upon governmental and administrative activity is important, it is not nearly so important as in the United States. This is largely due to the following facts: that judicial review of legislative acts has not developed so largely in Germany as in this country; that the ordinary courts have little control over administration; and that the doctrine of *stare decisis* is not followed in any rigid way, as in the United States. For the whole field of government and administration, beside the decisions of the national courts, the decisions of the state administrative courts are the most important.

*The Reich—Ordinary Courts*

The reports of the Reichsgericht appear in two separate series: Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 1, 1880, to date. Entscheidungen des Reichsgerichts in Strafsachen, Vol. 1, 1880, to date. There are indexes to both series.

The decisions of the Staatsgerichtshof are published as Anlagen to the Entscheidungen des Reichsgericht in Zivilsachen. 1924 to date.

*The Reich—Administrative Courts*

Patents. Entscheidungen in Patentsachen (Gareis) 1881-1894, Bd. 1-10, continued as Die Patentämlichen und gerichtlichen Entscheidungen in Patent-Muster- und Markenschutzsachen. (Gareis), 1896 to date.

Poor Law Unions. Entscheidungen des Bundesamts für das Heimatwesen, 1873 to date; Entscheidungen in Angelegenheiten der freiwilligen Gerichtsbarkeit und des Grundbuchrechts. 1900 to date.

Insurance. Entscheidungen und Mitteilungen des Reichsversicherungsamts. 1914 to date; Sammlung von Entscheidungen des

- Reichsversicherungsamts, der Landes- und Obergerichtsämter, und andere Entscheidungen aus dem Gebiete der Arbeiter- und Angestelltenversicherung. Vols. 1914-22 are published as special numbers entitled "Krankenversicherungspraxis." Later volumes to date under the above title.
- Social Assistance. Entscheidungen des Reichsversicherungsgerichts. 1920 to date.
- Maritime Affairs. Entscheidungen des Oberseeamts und der Seeämter des Deutschen Reich. Number of volumes and inclusive dates not available.
- Military Affairs. Entscheidungen des Reichsmilitärgerichts. Vols. 1-22, 1902-1919.
- Railway Affairs. Entscheidungen und Abhandlungen, Eisenbahn- und Verkehrsrechtliche. Zeitschrift für Eisenbahn und Verkehrsrecht. Bds. 1-44, to date.
- National Taxation. Die Rechtsprechung des Reichsfinanzhofes in Leitsätzen, Reichsabgabenordnung, Besitz- und Verkehrssteuern, prepared by Heinrich Reinach, 1922 to date; Entscheidungen und Gutachten des Reichsfinanzhofs, Official Collection. Bd. 1-17.
- Economic Court. Entscheidungen des Reichswirtschaftsgerichts, Vol. 1, 1923 to date; Die Rechtsprechung der Oberlandesgerichte auf dem Gebiete des Zivilrechts, Vol. 1, 1900 to date.
- Die Rechtsprechung des Obergerichts und Reichsgerichts auf dem Gebiete des Kommunalbeamtenrecht in Preussen, prepared by W. Thiesen, Bd. 1, 1919.

*The Reich—Collected Decisions*

Several important collections of court decisions are valuable in case the complete court reports are not available.

- J. U. Seufferts Archiv für Entscheidungen der obersten Gerichten in den Deutschen Staaten.  
 Original Series 1-30, 1847-1875.  
 New Series 1-25, 1876-1901.  
 Third Series 1-27, 1902 to date.  
 Registers (Index), Vols. 1-65.
- Warneyers Jahrbuch der Entscheidungen. Special issue C. Arbeiterversicherungsrecht, 3 Vols. 1907-1919.
- Warneyers Jahrbuch der Entscheidungen auf dem Gebiete des Zivil-, Handels- und Prozessrechts.  
 Vol. 1, 1900-1902 to date.  
 Vol. 17, combined with Soergels Jahrbuch, Vol. 19.  
 Title varies.  
 Index 1-10.
- Warneyers Jahrbuch des Entscheidungen. (Special issue D.) Verwaltungsrecht. 2 vols. 1907-1908.



*Baden*

Rechtsprechung des Grossherzoglich Badischen Verwaltungsgerichtshofes. Vol. 1. 1891.

*Bavaria*

Sammlung von Entscheidungen des Bayerischen Obersten Landesgerichts in Civilsachen und von Entscheidungen des Notariatsdisziplinarhofs, Vol. 1, for years 1901-1910.

Sammlung von Entscheidungen des Königlichen Bayerischen Verwaltungsgerichtshofes. Vol. 1. 1880 to date.

Sammlung von Entscheidungen d. Kgl. Oberlandesgerichts in München in Gegenständen des Strafrechts und Strafprozess. Vol. 1. 1882-1890.

Sammlung von Entscheidungen des Obersten Gerichtshofes für Bayern in Gegenständen des Civilrechts und Civilprozesses, Vols. 1-17. 1872-1900.

*Hesse*

Entscheidungen des Grossh. Hessischen Verwaltungsgerichtshofs. Vol. 1. 1913 to date.

*Prussia*

Entscheidungen des Königlichen Oberverwaltungsgerichts. Vol. 1, 1877 to date. Index 1-65.

Entscheidungen der Gerichte und Verwaltungs Behörden aus dem Gebiete des auf reichsgesetzlichen und gemeinrechtlichen Bestimmungen beruhenden Verwaltungs- und Polizeistrafrecht. Vol. 1, 1881 to date.

**Proceedings of Legislative Bodies.** The proceedings of the legislative bodies are of fundamental importance for a student of public administration. These should be divided into two classes: The proceedings of the legislature as the constituent authority, and the regular legislative proceedings. The proceedings of the constituent authorities show the various drafts of the constitutions, the debates in committee, reports of committees, and the debates in the constituent assembly. These debates show the reasons for establishing the constitutions as they are. They show the political philosophy in the minds of the framers of the constitutions. The regular proceedings of the legislative bodies are important for showing the relationship between the legislature and the administration, the extent to which the legislature and its committees coöperate or control in budgetary procedure, the methods by which



they exercise control, and the reasons for passing various laws affecting administration.

With the exception of the Reichstag, no attempt will be made here to list the proceedings of the various legislative bodies which preceded those established by the new constitutions, as those proceedings are chiefly of historical interest to-day. The great majority of them are available at the Library of Congress. As a rule the documents of the legislative assemblies are divided into the proceedings proper, and the materials brought before the assemblies in the form of motions, reports, etc., which are given in separate volumes.

### *The Reich—The Reichstag*

The proceedings of the National Assembly of 1919 are found in Verhandlungen der Verfassungsgebenden Deutschen Nationalversammlung, Bds. 326, 327, 328 of the Proceedings of the Reichstag. The report of the constitutional committee is found in Verhandlungen der Verfassungsgebenden Deutschen Nationalversammlung, Bd. 336, Anlagen zu den Stenographischen Berichten. The ordinary proceedings of the Reichstag appear under the title, Stenographische Berichten des Reichstags mit Anlagen, 1871 to date.

The National Economic Council Proceedings have the title, Deutsches Reich, Reichswirtschaftsrat, Stenographische Bericht.

### *Anhalt*

The constitutional debates are found in Verhandlungen der konstituierten Landesversammlung für Anhalt, Bds. 1-2.

The proceedings of the Landtag have the title: Verhandlungen des Anhaltischen Landtags. These consist of Stenographischen Berichte, and Anlagen zu der Stenographischen Berichte.

### *Baden*

The constitutional proceedings are found in Badische Verfassungsgebende Nationalversammlung, Amtliche Berichten über die Verhandlungen, Nos. 11, 12, 13, 14, and Drucksachen.

The proceedings of the Landtag have the following title: Verhandlungen des Badischen Landtags, 1919 to date, with Beilegenheft.

### *Bavaria*

The constitutional proceedings are in:

1. Verhandlungen des Bayerischen Landtags 1919: Beilage 126.
2. Verhandlungen des II (Verfassungs) Ausschusses, 1 Teil, Beilage 324.

3. Bericht des II (Verf.-) Ausschusses, Beilage 330, Nachtrag, Beilage 360, Beschluss, Beilage 377.
4. Verhandlungen des II (Verf.-) Ausschusses, II Teil, Beilage 382.
5. Schriftl. Bericht des II (Verf.-) Ausschuss (Plenarsitzung), Stenographische Bericht der öffentlichen Sitzung von 12 Aug. 1919.

The ordinary proceedings are entitled, Verhandlungen des Bayerischen Landtags, 1919 to date. They consist of:

Stenographische Berichte.  
Beilagen.

Indexes are published under the title, Übersicht über die Verhandlungen des Landtags des Freistaats Bayern.

### *Bremen*

Constitutional Proceedings. Verhandlungen der Verfassunggebenden Bremischen Nationalversammlung (1920). See also Verhandlungen zwischen Senat und Nationalversammlung 1919-20, Mitteilung des Senats, and Senat- und Bürgerschaft-Verhandlungen (for ordinary proceedings).

### *Brunswick*

Constitutional Proceedings. Braunschweigisches Landtag 1920-21; Verhandlungen der Landesversammlung, 78, 79, 118, 119, 120, 121, 122, 125. Bericht des Verfassungsausschusses, Drucksachen 485. Bericht der Minderheit des Verfassungsausschusses, Drucksachen 492.

Ordinary Proceedings. Verhandlungen des Braunschweigischen Landtags.

### *Hamburg*

Constitutional Proceedings. Bericht des von der Bürgerschaft am 28 März. 1919 niedergesetzten Ausschusses zur Ausarbeitung einer neuen Verfassung. Protokolle und Ausschussbericht der Bürgerschaft 1920; Ausschussbericht no. 53, 59, 76.

Ordinary Proceedings. Verhandlungen zwischen Senat und Bürgerschaft, 1859 to date. Hamburg. Bürgerschaft. Stenographische Bericht über die Sitzungen der Bürgerschaft zu Hamburg.

### *Hesse*

Constitutional Proceedings. I Landtag, Verfassunggebende Volkskammer der Republik Hessen, 1919, Drucksachen 237. Bericht des Verfassungs-Ausschusses, Drucksachen, 253.

General Debate. Protokolle, p. 993, 1009, 1031.

Ordinary Proceedings. Verhandlungen des Landtags.

*Lippe*

Constitutional Proceedings. Protokolle der Lippischen Landtagsverhandlungen, 1920, Nos. 78, 81, 84.

Ordinary Proceedings. Landtagsverhandlungen.

*Lübeck*

Constitutional Proceedings. Protokolle des Bürgerausschuss, 1920, Nos. 8 (IV, 1), 12 (I), 14 (I), 15N. Protokolle der Bürgerschaft, 1920, Nos. 5 (II), 9 (I), 10 (IX), 11 (III), 12 (III): Senatsantrag 377, Rat- und Bürgerschluss; 21 Mai 1920.

Ordinary Proceedings. Lübeckische Verhandlungen des Senates mit dem Bürgerausschusse und der Bürgerschaft.

*Mecklenburg-Schwerin*

Constitutional Proceedings. Verfassunggebender Landtag von Mecklenburg-Schwerin, Drucksachen, 35, 43, 153.

Ordinary Proceedings. Verhandlungen des Mecklenburg-Schwerinischen Landtags.

*Mecklenburg-Strelitz*

Constitutional Proceedings. Drucksachen des Landtags von Mecklenburg-Strelitz, 1923, Nos. 585, 683, 687, 690. Berichte der Sitzungen des Landtags von Mecklenburg-Strelitz, of March 14 and May 16, 1923.

*Oldenburg*

Constitutional Proceedings. Verfassunggebende Oldenburgische Landesversammlung, 1919, Anlagen 1, 28, 29, 30, 31. Stenographische Berichte (of the various sittings).

Ordinary Proceedings. Verhandlungen der Landtags.

*Prussia*

Constitutional Proceedings. Verfassunggebende Preussische Landesversammlung, 1919-1920.

Sammlung der Drucksachen der verfassunggebenden Preussischen Landesversammlung.

Sitzungsberichte der verfassunggebenden Preussischen Landesversammlung, 1919-1920.

Ordinary Proceedings. Sammlung der Drucksachen des Preussischen Landtags. Sitzungsberichte des Preussischen Landtags.

*Saxony*

Constitutional Proceedings. Volkskammerakten, 1920. Verhandlungen der Sächsischen Volkskammer, 1920.

Ordinary Proceedings. Verhandlungen des Sächsischen Landtags, Verhandlungen und Vorlagen.

*Schaumburg-Lippe*

Constitutional Proceedings. Schaumburg-Lippische Landtagsverhandlungen, 1921-1922.

Ordinary Proceedings. Landtags-Verhandlungen.

*Thüringia*

Constitutional Proceedings. Landtag 1920-21. Drucksachenband, and Stenographische Berichte.

Ordinary Proceedings. Stenographische Berichte über die Sitzung des (number) Landtags von Thüringen. Drucksachen.

*Württemberg*

Constitutional Proceedings. Württembergischer Landtag, 1919, Beilage. Verhandlungen der verfassunggebenden Landesversammlung beziehungsweise des Landtags des freien Volksstaats Württemberg. Protokoll und Beilagen.

Ordinary Proceedings. Verhandlungen des Württembergischer Landtags.

**Periodical Literature.** There is a very large periodical literature regarding German government and administration. For one who uses this material extensively, the Union List of Serials in Libraries of the United States and Canada, edited by Winifred Gregory (1927) is of great value as showing in which libraries these periodicals are available. The list here given is not complete, since no attempt is made to list periodicals which ceased to exist before 1871, and a great number of publications dealing with the details of administration, such as public officers, water works, public buildings, highways, taxation, etc., are either listed under special topics or are omitted altogether. Some of the less important periodicals are not listed, although they still exist. Nearly all the more important of these periodicals are to be found in the Library of Congress, either in the Periodical Division or in the Law Division. The magazines are listed here alphabetically without any attempt to classify them. A special note is appended to those that are of the

greatest importance to a student of government and administration. An attempt is made to show at least one library in the United States, where all the numbers are available. This, however, has not always been possible, as several rather important periodicals, particularly the newer ones, are not listed in Gregory. For a complete list on any one subject, the Deutsches Bücherverzeichnis should be consulted under the heading dealing with that subject.<sup>1</sup>

Annalen des Deutschen Reichs für Gesetzgebung, Verwaltung und Volkswirtschaft. (LC) Vol. 1-date, 1868-date.

Annalen für Soziale Politik und Gesetzgebung. (LC) Vols. 1-6, 1911-1919.

Archiv des Deutschen Reichs: Jahrbuch für Staatsrecht und Gesetzgebung. Vols. 1-10, 1873-1875. Continues Archiv des Norddeutschen Bundes.

Archiv des Oeffentlichen Rechts. (LC) Vols. 1-42, 1886-date.

Archiv für die civilistische Praxis. (LC) Vols. 1-120, 1815-1922: New Series, Vols. 1-5, 1923-date.

Archiv für Eisenbahnwesen. (LC 1879-1918: lacks v. 20-21). Vols. 1-date, 1878-date. Title varies.

Archiv für Entscheidungen der obersten Gerichte in den Deutschen Staaten. See Seuffert's Archiv, below.

Archiv für Sozialwissenschaft und Sozialpolitik (LC) Vol. 1, 1888. Vols. 1-18 as Archiv für soziale Gesetzgebung und Statistik.

Archiv für Rechtspflege in Sachsen, Thüringen und Anhalt. (LC lacks v. 1) Vol. 1, 1924-date.

Continues Sächsisches Archiv für Rechtspflege.

Archiv für Rechts- und Wirtschaftsphilosophie. (LC lacks v. 10) Vol. 1, 1907-date.

Archiv für Strafrecht und Strafprozess (LC lacks v. 68-69). Vol. 1, 1853-date.

1853-1870 as Archiv für Preussisches Strafrecht; 1871-1879

Archiv für gemeines Deutsches und für Preussisches Strafrecht; 1880-1899 Archiv für Strafrecht. Suspended Mar., 1920-Feb., 1925.

Archiv für Verwaltungsrecht. (Columbia) Vol. 1, 1876-date.

Blätter für administrative Praxis. (LC lacks v. 66-68) Vols. 1-72, 1851-1922.

Blätter für vergleichende Rechtswissenschaft und Volkswirtschaftslehre. (LC lacks v. 7, 17, 19). Vols. 1-19. Ceased 1925. Index 1-19.

<sup>1</sup>The symbol "LC" indicates Library of Congress, which has been used as the main source, although in many instances other important libraries also have the material. These are usually indicated. When volumes are lacking in the library files, this fact is also indicated.

Blätter für Gesetzkunde. Vol. 1, 1920-date.

Beiträge zur Erläuterung des Deutschen Rechts. (LC lacks v. 65)  
Vol. 1, 1857-date.

Vols. 1857-71 as Beiträge zur Erläuterung des Preussischen  
Rechts durch Theorie und Praxis. Subtitle varies.

Index 1-20: 21-35.

Das Recht, Juristisches Zentralblatt für Praktiker. (LC lacks v.  
20 and 23) Vol. 1, 1897-date.

Deutsches Beamten Archiv. Vol. 1, 1920 (?)

Deutsches Rechtsblatt, Sammlung der Rechtsbestimmungen des  
Reichs und der Bundesstaaten. Vol. 1, 1920 (?)

Der Gerichtssaal, Zeitschrift für Zivil- und Militärstrafrecht und  
Strafprozessrecht sowie die ergänzenden Disziplinen. (LC)

Vol. 1, 1849-date. Subtitle varies. Vol. 24 ff. as new series.

Index 1-63.

Deutsche Blätter für Erziehenden Unterricht. (LC v. 1-32:  
Teachers' College, Columbia) Vol. 1, 1874-date.

Deutsche Einheit. (LC lacks v. 1-3) Vol. 1, 1919.

Vols. 1-5 as Demokratische Deutschlands.

Deutsche Finanz- und Steuergesetze in Einzelkommentaren. (LC  
incomplete; Columbia) Vol. 1, 1920-date.

Deutsche Gesellschaft für Politik. (Columbia) Vol. 1, 1920-date.

Deutsche Juristen-Zeitung. (LC lacks v. 26) Vol. 1, 1896-date.

This is one of the most valuable periodicals for short articles  
on German government and administration. It appears bi-  
monthly and contains the latest information on various govern-  
mental problems, new laws, court decisions, etc.

Deutsche Justiz-Statistik. (LC lacks v. 17-18) Vols. 1-18, 1883-  
1920.

Deutsche Revolution, ein Sammlung Zeitgemässer Schriften. (LC  
v. 3-4; Columbia, v. 1-7) Vol. 1, 1919-date.

Valuable for study of revolutionary period.

Deutsche Revue, ein Monatsschrift. (LC lacks v. 23-24) Vols. 1-47,  
1877-1922.

Deutsche Rundschau. (LC) Vol. 1, 1874-date.

Index 1-40: 81-120.

Die Staats- und Selbstverwaltung (new periodical).

Fischers Zeitschrift für Verwaltungsrecht. Vol. 1, 1868 (?)

Gesetz und Recht: Zeitschrift für Allgemeine Rechts- und Staats-  
kunde. (LC; Harvard Law; Columbia) Vol. 1, 1899-date.

Gewerkschafts Verband der Gemeinde- und Staatsarbeitern (New  
York Pub.) Vol. 1, 1896.

Gemeinde-Verwaltung-Bericht. (Crerar) Vol. 1, 1829.

Juristische Wochenschrift. (LC v. 35 to date, except 45 to 49) Vol.  
1, 1872-date.

Valuable for articles and digests of court decisions.

Justiz-Ministerial-Blatt für die Preussische Gesetzgebung und Rechtspflege. Vol. 1, 1838 (?)

Justizministerialblatt für das Königreich Bayern. Vol. 1. 1863.

Juristische Rundschau. Vol. 1, 1903 (?)

Jahrbuch des Oeffentlichen Rechts der Gegenwart. (LC) Vol. 1, 1907- . Suspended 1915-19- resumed to date.

Extremely valuable for contemporary material.

Jahrbuch des Reichssteurrechts. (Harvard Law) Vol. 1, 1921-date.

Jahrbuch des Reichsversicherungs- und Reichsversorgungsrechts. (Harvard Law) Vol. 1, 1912-date. Title varies.

Jahrbuch des Verwaltungsrechts. (LC) Vols. 1-8, 1905-1913.

Jahrbuch des Zivilrechts. (Columbia) Vol. 1, 1900-date

Jahrbuch für Gesetzgebung, Verwaltung und Rechtspflege des Deutschen Reichs. (LC) Vols. 1-4, 1871-1876.

Continued as Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reich, later Schmollers Jahrbuch.

Jahrbuch für Entscheidungen des Kammergerichts in Sachen der freiwilligen Gerichtsbarkeit in Kosten-Stempel- und Strafsachen. (LC) Vols. 1-53, 1881-1922.

Continued as Jahrbuch für Entscheidungen in Angelegenheiten; der freiwilligen Gerichtsbarkeit und des Grundbuchrechts.

Index 1-40.

Jahrbücher des Sächsischen Oberverwaltungsgerichts. (Columbia) Vol. 1, 1902-date.

Jahresberichte über das Höhere Schulwesen (Harvard; New York Pub.) Vols. 1-34, 1886-1919.

Kommunale Rundschau. (Not complete in U. S.; New York Pub., v. 3, 4, 6, 7, 11) Vol. 1, 1909.

Leipziger Rechtswissenschaftliche Studien. (By Leipzig Universität Juristen-Facultät) (LC) Vol. 1, 1922-date.

Leipziger Zeitschrift für Deutsches Recht. (LC) Vol. 1, 1907-date.

Vols. 1-7, 1907-1913, as Leipziger Zeitschrift für Handels-Konkurs- und Versicherungsrecht.

Monatshefte Deutscher Städte. (New York Pub.) Berlin, Vol. 1, 1921- . Vol. 1, 1921, as Vierteljahrshefte Deutscher Städte.

Monatsschrift für Deutsche Beamte. Vols. 1-43, 1877-1919.

Niemeyers Zeitschrift für Internationales Recht. (LC) Vol. 1, 1890-date.

Title varies.

Die Polizei, Zeitschrift für das Gesamte Polizei- und Kriminalwesen. Vol. 1, 1903-date.

Polizei: Zeitschrift für Polizeiwissenschaft, Dienst und Wesen. (Harvard Law) Vol. 1, 1904+

1923+ includes a current supplement: Archiv für Polizeirecht.

Index 1-20, 1904-1924.

Preussisches Archiv, Sammlung des Gesetz und der Rechtswesen, Verordnungen, etc.

Preussisches Verwaltungsblatt. (LC) Vol. 1, 1879 (?) -date.

Preussisches Jahrbuch. Vol. 1, 1858-date.

Recht und Staat in Geschichte und Gegenwart. (LC) Vol. 1, 1913-date.

Rechtssprechung des Reichsgerichts auf dem Gebiete des Zivilrechts soweit Sie nicht in der Amtlichen Sammlung der Entscheidungen des Reichsgerichts abgedruckt ist. (LC; Harvard Law) Vol. 1, 1907-date.

Rechtssprechung und Schrifttum in Reichssteuersachen. Columbia) Vol. 1, 1920-date.

Reich und Länder. (LC) Vol. 1, 1927.

This periodical is very valuable, as it contains information about the various states.

Sächsisches Archiv für Rechtspflege. (LC) Vol. 1, 1921-1923.

Continued as Archiv für Rechtspflege in Sachsen.

Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reich. (LC) Vol. 1, 1877.

Selbstverwaltung in Wissenschaft und Praxis. (Columbia) Vol. 1, 1922-date.

Seufferts Archiv für Entscheidungen der Obersten Gerichte in den Deutschen Staaten. (LC) Vol. 1, 1847-date.

Vols. 1-11 as Archiv für Entscheidungen der Obersten Gerichte in den Deutschen Staaten.

Indexes: 1-20; 21-25; 26-30; 31-35; 36-40; 41-45; 47-50.

Seufferts Blätter für Rechtsanwendung. (Harvard) Vol. 1, 1836-1913.

See 1914 combined with Zeitschrift für Rechtspflege in Bayern.

Studien zur Erläuterung des Bürgerlichen Rechts. (LC lacks v. 28) Vol. 1, 1900-date.

Untersuchungen zur Deutschen Staats- und Rechtsgeschichte. (LC) Vol. 1, 1878-date.

Verein für Sozialpolitikschriften. (LC v. 1-148). Vol. 1, 1873-date.

Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer. Vol. 1, 1924-date.

Verwaltung und Statistik. (New York Pub.) Vol. 1-9, 1911-1919.

Vols. 4-9 as supplement to Monatsschrift für Deutsche Beamte.

Verwaltungsarchiv, Zeitschrift für Verwaltungsrecht und Verwaltungsggerichtsbarkeit. (LC lacks v. 17, 24, 25; Yale) Vol. 1, 1892-date.

This is one of the most valuable publications in the field of public law, as it contains long articles and very valuable book reviews, lists of doctoral dissertations, etc.



Vierteljahrschrift für Staats-und Volkswirtschaft, für Litteratur und Geschichte der Staatswissenschaften aller Länder. Columbia) Vols. 1-5, 1893-1897.

1-3, 1893-1894 as Zeitschrift für Litteratur und Geschichte der Staatswissenschaften. Continues Vierteljahrschrift für Volkswirtschaft, etc.

Vierteljahrschrift für Volkswirtschaft, Politik und Kulturgeschichte. (LC) Years 1-30. Vols. 1-120, 1863-1893.

Index years 1-28 in Vol. 112.

Vierteljahrschrift für Statistik des Deutschen Reichs. (New York Pub.) Vol. 1, 1892-date.

Earlier numbers as part of Statistik des Deutschen Reichs. Wirtschafts- und Verwaltungsstudien mit besonderer Berücksichtigung Bayerns. (LC odd volumes; Crerar) Vol. 1, 1884.

Württembergisches Archiv für Recht und Rechtsverwaltung mit Einschluss der Administrativ-Justiz. (Harvard Law) Vols. 1-23, 1848-1884.

Zeitschrift für das gesamte Fortbildungsschulwesen in Preussen. (Cornell).

Zeitschrift für deutsches Recht und deutsche Rechtswissenschaft. (LC) Vols. 1-20, 1839-61.

Zeitschrift für die freiwillige Gerichtsbarkeit und die Gemeindeverwaltung in Württemberg. (Harvard Law) Vols. 1-36, 1858-1894.

Zeitschrift für die gesamte Staatswissenschaft. (LC) Vol. 1, 1844, new ed., Vol. 1, 1901.

Zeitschrift für die gesamte Strafrechtswissenschaft. (LC lacks v. 40-44; Yale) Vol. 1, 1881-date.

Zeitschrift für Gesetzgebung und Praxis auf dem Gebiete des Deutschen Oeffentlichen Rechts. (LC). Vol. 1-6, 1875-1880.

Zeitschrift für Kommunalwirtschaft und Kommunalpolitik. (New York Pub.) Vol. 1, Nov. 1910-date.

Zeitschrift für Politik. (LC lacks v. 10-11; Harvard).

Zeitschrift für Oeffentliches Recht. Vol. 1, 1919-20.

Zeitschrift für Polizei-und Verwaltungsbeamte. Vol. 1, 1893.

Zeitschrift für Selbstverwaltung. Vol. 1, 1918-1919.

This is the publication of the counties, etc.

Zentralblatt für das Deutsche Reich (LC lacks v. 50, 52; Penn. U., v. 18) Vol. 1, 1873-date.

Zentralblatt für die gesamte Unterrichtsverwaltung in Preussen. (No complete set in United States. Scattered copies LC, Bureau of Education has late copies. Harvard complete after 1908. Teachers College, Columbia, nearly complete). Vol. 1, 1859-date.

This is most authoritative journal for educational system in Prussia. Contains ordinances dealing with education, articles, etc.

**General Works on Political Theory.** For the proper understanding of the German governmental and administrative system a rather thorough grasp of the field of German political science and political philosophy is necessary. There are also numerous general works on the national state and local governments, as well as on administrative law and public administration, that should be consulted. Only the more important of these works can be listed here.

*General Political Philosophy*

One of the most modern books dealing with political philosophy is:

Hans Kelsen, *Allgemeine Staatslehre, Enzyklopädie der Rechts- und Staats-Wissenschaft XXIII.* (1925).

Among the other very important books dealing with this subject are:

J. C. Bluntschli, *Allgemeine Staatslehre* (1875).

C. F. von Gerber, *Grundzüge eines Systems des Deutschen Staatsrechts* (2 ed., 1869).

Hans Kelsen, *Hauptprobleme der Staatsrechtslehre* (1911).

Georg Jellinek, *Allgemeine Staatslehre* (4 ed., 1922).

Felix Kaufmann, *Die Kriterien des Rechts* (1924).

Rudolf Kjellen, *Der Staat as Lebensform* (4 ed., 1924).

Julius Hatschek, *Allgemeines Staatsrecht* (1909).

Otto Gierke, *Die Grundbegriffe des Staatsrechts und die neuesten Staatsrechtstheorien*, in *Zeitschrift für die gesamte Staatswissenschaft* (1874).

Hermann Rehm, *Allgemeine Staatslehre* (1899).

Adolf Merkl, *Demokratie und Verwaltung* (1923).

Richard Schmidt, *Allgemeine Staatslehre* (1901).

*Administrative Law*

Fritz Stier-Somlo and Alexander Elster, *Handwörterbuch der Rechtswissenschaft* (1927) should be consulted for specific subjects.

Gerhard Anschütz, *Verwaltungsgerichtsbarkeit* (Handbuch d. Politik, 3 ed., Bd. 1).

Gerhard Anschütz, *Allgemeine Begriffe und Lehren des Verwaltungsrechts nach der Rechtsprechung des Oberverwaltungsgerichts* (Preussisches Verwaltungsblatt Bd. 22 p. 83 ff.)

Carl Dieckmann, *Verwaltungsrecht* (1923).

This is descriptive of the actual administration rather than theoretical.

Dochow, *Verwaltung und Wirtschaft* (2 ed., 1922).

F. Fleiner, *Institutionen des Deutschen Verwaltungsrechts* (New ed., 1922).

— *Verwaltungsrechtsfälle* (1919).

Julius Hatschek, *Lehrbuch des Deutschen und Preussischen Verwaltungsrechts* (3 and 4 ed., 1924).

Loening, *Lehrbuch des Deutschen Verwaltungsrechts* (1884).

Otto Mayer, *Deutsches Verwaltungsrecht* (3 ed., 1924).

O. Meissner, *Das Staatsrecht des Reichs und Seiner Länder*. (New ed., 1923.)

— *Grundriss der Verfassung und Verwaltung des Reichs und Preussens*. (1922.)

H. Cuno, *Verwaltungsrecht und Verwaltungspraxis*. Heft I, *Das System* (1927).

This is a little book giving questions and answers in regard to administrative law, the first of a series.

Georg Meyer, *Deutsches Verwaltungsrecht* (4 ed., 1915).

Kirchenheim, *Einführung in das Verwaltungsrecht* (1885).

Bornhak, *Grundriss des Verwaltungsrecht in Preussen und dem Deutschen Reiche* (8 ed., 1925).

Frank J. Goodnow, *Comparative Administrative Law* (1893).

Karl Friedrichs, *Verwaltungsrechtspflege* (1920).

Walter Jellinek, *Verfassung und Verwaltung* (1925).

E. Heilfron, *Das Öffentliche Recht des Deutschen Reichs* (Latest ed., 1919).

Hans Fülster, *Verwaltungsrecht in Frage und Antwort* (1926).

Schoen, *Deutsches Verwaltungsrecht* (in Holtzend-Kohlers *Enzyklopädie*).

Graf Hue de Grais, *Handbuch der Verfassung und Verwaltung* (23 ed., 1926).

Walter Norden, *Staats- und Verwaltungslehre als Grundwissenschaft der Staatsbürgerkunde* (1919).

Lutz Richter, *Die Organisationsgewalt, Verwaltungsreform und Rechtsstaat* (1926).

**Administration and Administrative Practice.** This class differs from the preceding in that it does not deal with the general theory of administrative law, but with the details of administration. The more important books in this field are:

Graf Hue de Grais, *Handbuch der Verfassung und Verwaltung in Preussen und dem Deutschen Reiche* (24 ed., 1927).

This is one of the most valuable books on the details of the governmental and administrative systems of the Reich and Prussia. It is replete with citations to laws, ordinances and other sources; and frequent new editions keep it up to date.

W. V. Lympius, *Die Verfassung und Verwaltung in Preussen und im Deutschen Reich*, (1925).

Extremely brief, but contains helpful citations to the laws, ordinances, and court decisions.

Conrad, *Verwaltungspraxis für Beamte* (2 ed., 1924).

Hans Cuno, *Verwaltungsrecht und Verwaltungspraxis, Kurzer Überblick zum Unterricht und Selbststudium* (1927).

Consists of several small booklets devoted to the different fields of public administration, in which questions and answers are given.

Carl Dieckmann, *Verwaltungsrecht* (1923).

Gives a brief survey of almost every kind of administrative activity of the Reich and Prussia. It contains no page by page citations, but has an appendix containing the laws, ordinances, and other documents covering the subjects treated, fairly well classified.

H. G. James, *Principles of Prussian Administration* (1913). This book is still of value.

Dyroff, *Bayerisches Verwaltungsgesetz* (5 ed., 1917).

Friedrichs, Karl, *Die Gesetzgebung über die Allgemeine Landesverwaltungs- und Verwaltungsgerichtsbehörden* (3 ed., 1927).

Julius Hatschek, *Lehrbuch des Deutschen und Preussischen Verwaltungsrecht*. (5 and 6 ed., 1927).

W. Reuss, *Thüringisches Verwaltungsrecht* (1927).

Arndt, *Organisation der Verwaltungsbehörden*, in *Verwaltungsarchiv*, Vol. 26, 1917-1918.

Lassar, *Reichseigene Verwaltung unter der Weimarer Verfassung, Jahrbuch des Oeffentlichen Rechts der Gegenwart*, Vol. 14, 1926.

This is very important from the viewpoint of the actual working of national administration.

Brauchitsch, *Die Preussischen Verwaltungsgesetze; neu herausgegeben von Bill Drews und Gerhard Lassar* (1926).

Hans Helfritz, *Aktenstück des Verwaltungsrechts* (1927).

#### **State Constitutional Law, etc.**

Ad. Arndt, *Der Preussische Staatsrat und die Preussische Landesregierung*, in *Deutsche Juristen Zeitung*, Heft. 9/10 (1922).

Arndt, *Die Verfassung des Freistaats Preussen* (1921).

Conrad Bornhak, *Preussisches Staatsrecht* (2 ed., 1911).

Erich Cohn, *Die Stellung Preussens im Deutschen Staatsrecht* (1922).

Geschäftsordnung für den Preussischen Staatsrat, amtliche Ausgabe vom 11 Oct. 1921.

Albert Hensel, Der Finanzausgleich im Bundesstaat (1922).

Rudolph Huber, Die Rechte des Preussischen Staatsrats, in *Das Recht*, 1922, no. 9-10.

Robert Piloty, Die neue Preussische Verfassung. Abhandlung im *Archiv des Öffentlichen Rechts*, Bd. 40., Heft 1.

v. Ronne-Zorn, Das Staatsrecht der Preussischen Monarchie (5 ed., Bd. I, 1899; Bd. II, 1906).

Heinrich Simon, Das Preussische Staatsrecht (2nd part, 1844).

Stier-Somlo, Kommentar zur Verfassung des Freistaats Preussen (1921).

— Das Preussische Verfassungsrecht, Systematisch Darstellt (1922).

Waldecker, Ludwig, Die Verfassung des Freistaats Preussen (1921).

Kuno Waltemath, Der Staatsrat in der neuen Preussischen Verfassung, in *Zeitschrift f. d. Gesamte Staatswissenschaft*. Bd. 76. (1921-22), p. 350.

Hugo Preuss, Verfassung des Freistaats Preussen, in *Jahrbuch des Öffentlichen Rechts*, N. F., 6 Bd., 1924.

Hans Nawiasky, Bayerisches Verfassungsrecht (1923).

#### National Constitutional Law.

Arndt, Das Staatsrecht des Deutschen Reichs (1901).

J. Adams, Deutsches Staatsrecht, I, Allgemeines Staatsrecht (4 ed., 1920).

Bruno Beyer, Einführung in die Probleme des Staatsrecht (1918).

K. Binding, Die Staatsrechtliche Verwandlung des Deutsches Reich (1919).

C. Bornhak, Grundriss des Deutschen Staatsrecht (7 ed., 1927).

August Finger, Das Staatsrecht des Deutschen Reichs nach der Verfassung von 1919 (1923).

F. Giese, Grundriss des Reichsstaatsrecht (4 ed., 1926).

Julius Hatschek, Deutsches und Preussisches Staatsrecht (2 vols., 1922 and 1923).

— Institutionen Deutschen Staatsrechts, III (1926).

A. Haenel, Deutsches Staatsrecht (1892).

Helfritz, Allgemeines Staatsrecht (1924).

Georg Jellinek, System der subjektiven öffentlichen Rechts (2 ed., 1905).

Paul Laband, Deutsches Reichsstaatsrecht (6 ed., 1912; 7 ed., with O. Mayer, 1919).

Otto Meissner, Das Staatsrecht des Reich und seiner Länder (1923).

Fritz Stier-Somlo, Reichsstaatsrecht (1927).

— Deutsches Reichs- und Landesstaatsrecht (1924).

Ph. Zorn, Das Staatsrecht des Deutschen Reiches (2 ed., 1897).

— Die Alte und die neue Reichsverfassung (1924).

G. Meyer, Lehrbuch des Deutschen Staatsrechts (New ed., 1919, with Anschütz).

Triepel, Die Reichsaufsicht (1917).

Max Fleischmann, Einwirkung auswärtiger Gewalten auf die Deutsche Reichsverfassung (1925).

Hans Gerber, die Beschränkung der Deutschen Souveränität nach dem Versailler Verträge (1927).

Hugo Preuss, Verfassungspolitische Entwicklungen in Deutschland und Westeuropa. Historische Grundlegung zu einem Staatsrecht der Deutschen Republik (1927).

Venator, Unitarismus und Föderalismus in Deutschen Verfassungsleben, u. s. w. (1919).

Freytagh-Loringhoven, Die Weimarer Verfassung in Lehre und Wirklichkeit (1924).

Gerhard Anschütz, Drei Leitgedanken der Weimarer Reichsverfassung des Reichs und der Länder, in Teubners Handbuch der Staats- und Wirtschaftskunde, Bd. 2, Heft. 2.

Ronne, Das Staatsrecht des Deutschen Reichs (2 ed., 1877).

Poetzsch, Vom Staatsleben unter der Weimarer Verfassung (to Dec. 21, 1924). In Handbuch des Oeffentlichen Rechts der Gegenwart, 1925.

This is an excellent summary of the first few years of experience with the new Constitution.

Fülster, Das Deutsche Staatsrecht mit Einschluss der Allgem. Staatslehre (1913).

Gierke, Das Handbuch des Staatsrechts in der neuesten Staatsrechtstheorie (1915).

#### **State Administrative Law.**

Carl Dieckmann, Die Verwaltungsgerichtsbarkeit in Preussen (1923).

Piloty und Schneider, Grundriss des Verwaltungsrechts in Bayern und dem Deutschen Reich (1927).

Gerhard Anschütz, Die Organisationsgesetze der Innern Verwaltung in Preussen (1923).

Kurt Perels, Hamburgische Gesetze Staats- und Verwaltungsrechtlichen Inhalts (1927).

Kurt von der Mosel, Handwörterbuch des Sächsischen Verwaltungsrechts.

Seydel and Grossmann, Bayerisches Verwaltungsrechts (1913). In Jahrbuch des Oeffentlichen Rechts der Gegenwart, Bd. XXII, 1913.

K. Stengel, Die Organisation der Preussischen Verwaltung nach den neuen Reformgesetzen (1884).

Out of date now in some respects, but useful in others.

Stengel, Wörterbuch des Deutschen Staats- und Verwaltungsrechts (1911-1914).

Various articles should also be consulted in Handwörterbuch der Rechtswissenschaft, by Fritz Stier-Somlo and Alexander Elster (1927).

**Special Subjects.** In dealing with the material on special subjects, mention can only be made of works devoted chiefly to these fields. The more general works should also be consulted.

*Relation of the Reich and the States*

Anschütz-Bilfinger, Der Deutsche Föderalismus; Die Diktatur des Reichspräsidenten (Referate in Heft 1 der Veröffentlichungen der Vereinigung Deutscher Staatsrechtler, 1924).

Aretin, Frhr. v., Das Bayerische Problem (1924).

Blachly, F. F., and Oatman, M. E. The Position of the State in Germany, in Southwestern Political and Social Science Quarterly, March, 1927 (Vol. VII, No. 4).

This discusses in general the relationship existing at present.

Baumgartner. Das Reich und die Länder. Denkschrift über den Ausgleich der Zuständigkeiten zwischen dem Reich und seinen Ländern in Gesetzgebung und Verwaltung (1923).

Beyerle, Föderalistische Reichspolitik (1924).

Braun, Deutscher Einheitsstaat oder Föderativsystem? (2 ed., 1927).

Several books and articles deal with the problem of the supervision of the Reich over the states. The most important discussion of this supervision before the revolution is that of Heinrich Triepel, Die Reichsaufsicht (1917). Another book by the same author is valuable, Unitarismus und Föderalismus im Deutschen Reiche (1907). A doctoral dissertation by Heinrich Braasch, Die Reichsaufsicht (1926), beside containing a good bibliography on the subject, deals with the supervision over the states as exercised by the Reich to-day. See Rudolph Cohn, Die Reichsaufsicht über die Länder (1921). Fischer, Die Rechtlichen Grundsätze der Reichsaufsicht nach der neuen Reichsverfassung (1921), is valuable as showing the legal points involved. Hochst, Die Reichsaufsicht nach Bisherigem und Jetzigem Recht (1921), discusses the past and the present supervision. Other important books are:

Rudolph Cohn, Die Reichsaufsicht über die Länder.

Kries, Das Aufsichtsrecht des Reiches (1919).

- Rumbler, Das Aufsichtsrecht des Reiches nach der neuen Reichsverfassung (1922).
- Rümelin, Das Beaufsichtigungsrecht des Deutschen Reichs, in Zeitschrift f. d. gesamte Staatswissenschaft, Bd. 39.
- Storz, Die Reichsaufsicht über die Länder im allgemeinen und ihre Stellung im neuen Reichsrecht (1922).
- Schoenborn, Das Oberaufsichtsrecht des Staates im modernen Deutschen Staatsrecht (1906).
- Wollenberg, Die Reichsaufsicht über die Deutschen Gliedstaaten (1919).
- Festgabe der Berliner Juristenfakultät für Wilhelm Kahl (1923). Contains an essay on, Beiträge für Auslegung des Art. 19 des Weimarer Reichsverfassung, and an important study by Triepel, Streitigkeiten zwischen Reich und Ländern.
- Kiefer, Hermann, Das Aufsichtsrecht des Reiches über die Einzelstaaten (1909).
- Richard Grau, Die Diktaturgewalt des Reichspräsidenten und der Landesregierungen auf Grund des Artikels 48 der Reichsverfassung (1922).
- Karl Biffinger, Der Einfluss der Einzelstaaten auf die Bildung des Reichswillens (1923).
- Fick, Reichseinheit oder Föderalismus (1925).
- Jacobi, Einheitsstaat oder Bundesstaat (1919).
- Jung, Die Verwaltungsbefugnisse des Bundesrats (1910).
- Kersten, Otto, Staat oder Reichsstaat (1921).
- Constantin Frantz, Deutschland und der Föderalismus (1921).
- H. C. Lohmayer, Zentralismus oder Selbstverwaltung (1928).
- Meyer-Lursen, Die Rechtliche Stellung der Reichsbevollmächtigten (1924).
- Otto, Die Deutsche Frage: Bundesstaat oder Einheitsstaat (1921).
- Theodor Heuss, Die Bundesstaaten und das Reich (1918).
- Jos. B. Kittel, Die Preussische Hegemonie (1896).
- Zaske, Der Föderative Gedanke in der Weimarer Reichsverfassung und deren Revision nach Föderalistischen Gesichtspunkten (Dissertation, 1926).
- Gerhard Anschütz, Das Preussische-Deutsche Problem (1922).
- Hacker, Die Beiräte für besondere Gebiete der Staatstätigkeit.
- P. Prion. Die Abgeltung von Ansprüchen gegen das Reich (Dissertation, 1926).
- See also the article by Schwalb, Die Ausserordentlichen Befugnisse der Landesregierung aus Art. 48, in Deutsche Juristen-Zeitung, 1925. Heft 3; the article by Strupp, Das Ausnahmerecht der Länder nach Art. 48 der Reichsverfassung, in Archiv des Oeffentlichen Rechts, 1923, Bd. 5, Heft 2; and the article by Stier-Somlo, zur Frage des Unitarismus und Föderalismus im Deutschen Reich, in Zeitschrift für die gesamte Staatswissenschaft, Vol. 79.



*The Reichstag and the Reichsrat.* Beside the material dealing with the subject in commentaries and treatises on the Constitution, many of the works in the preceding section contain valuable material. Several special treatments of the subject exist. Among them should be mentioned:

- Heck, Das parlamentarische Untersuchungsrecht, in Tübinger Abhandlungen z. öffentlichen Recht, 7 Heft. (1925).  
 Kaufmann, Untersuchungsausschuss und Staatsgerichtshof (1920).  
 Lewald, Das Recht der Parlamentarischen Enquete und das Kriegsschuldproblem (1922).  
 — Enqueterecht und Aufsichtsrecht, Archiv des Öffentlichen Rechts, N. F., Bd. 5.  
 Lucas, Die Verhandlung von Beweisanträgen vor parlamentarischen Untersuchungsausschüssen nach der Preussischen Verfassung, in Archiv des Öffentlichen Rechts, N. F., Bd. 8.  
 Poetzsch, Vom Staatsleben, etc. Archiv des Öffentlichen Rechts, Bd. 43, p. 210 ff. (1925).  
 Warmuth, Staatsgerichtshof und Parlamentarischer Untersuchungsausschuss (1920).  
 Max Weber, Parlament und Regierung im Neugeordneten Deutschland (1918).  
 Zweig, Die parlamentarische Enquete nach Deutschen und Oesterreichischem Recht, in Zeitschrift für Politik, Bd. VI, 1913.  
 Das parlamentarische Enqueterecht im Deutschen Reich und in der Deutschen Einzelstaaten in Staatsrechtlicher Entwicklung (1926).  
 Hugo Preuss, Deutschlands Republikanische Reichsverfassung (1923).  
 Zeimann, Der Reichsrat nach der Verfassung des Deutschen Reichs vom 11 August, 1919 (1920).  
 Rieker, Die rechtliche Natur der Modernen Volksvertretung (1893).  
 Wilhelm Kitz, Reichsland Preussen, Ein Beitrag zur Verfassungs- und Verwaltungs-reform (1927).  
 Josef Held, Der Reichsrat, seine Geschichte, seine Rechte und seine Stellung nach der Reichsverfassung vom 11 August, 1919 (1926).  
 Carl Heyland, Zur Lehre von der Staatsrechtlichen Stellung der Reichsratsmitglieder nach dem Deutschen Reichs- und Landesstaatsrecht (1927).  
 Erdmann, Die Parlamentsprivilegien der Deutschen Reichs- und Landtagsabgeordneten (Dissertation, 1926).  
 Krallmann, Das Recht zur Auflösung der Parlament (Dissertation, 1926).  
 Walter Petruschke, Die Auflösung des Reichstags durch den Reichspräsident (Dissertation, 1925).

R. Volger, *Die Ordnungsgewalt der Deutschen Parlamente* (1926). See also *Übersicht der Entschliessungen des Reichstags, nebst Beantwortung der Reichsregierung*. For example, see Reichstag III—1924-1926, Drucksachen 2821, and Reichstag III—1924-1927, Drucksachen 3422.

*The Cabinet System.* Beside the general works on constitutional law, government, and administration listed above, the following works deal in more detail with the cabinet system in Germany:

O. Koellreutter, *Das Parlamentarische System in den Deutschen Landesverfassungen* 1921 (in *Recht und Staat*).

Rudolf Smend, *Die politische Gewalt im Verfassungsstaat und das Problem der Staatsform* (1923). (Found in *Festgabe für Wilhelm Kahl*).

Hans Nawiasky, *Die Stellung der Regierung im Modernen Staat* (1925).

Arnold Brecht, *Die Geschäftsordnung der Reichsministerien* (1927).

Friedrich Glum, *Die Staatsrechtliche Stellung der Reichsregierung sowie des Reichskanzlers und des Reichsfinanzministers in der Reichsregierung* (1925).

Erich Kaufmann, *Die Reichsregierung*, in *Handbuch der Politik*, 3 ed., Bd. 3, p. 49 (1921).

Max Weber, *Parlament und Regierung im Neugeordneten Deutschland* (1918).

R. Jansen, *Die Regierungsbildung in Preussen* (1921).

*The National President.* There is much discussion regarding the position of the national President. For debates in the Constitutional Assembly, see *Verhandlungen der verfassungsgebenden Deutschen Nationalversammlung*. See Vol. 334, *Sach- und Sprechregister zu den stenographischen Berichten und den Anlagen*, for an index covering this subject. See also *Berichte und Protokolle des achten Ausschusses, No. 21, über den Entwurf einer Verfassung des Deutschen Reichs*, 1920.

Most of the commentaries and treatises on the Constitution contain considerable material on the national President. Several books or articles deal generally with the subject. Among them should be mentioned:

Otto Meissner, *Der Reichspräsident*, *Handbuch der Politik*, Bd. 3 (1921).

Saenger, *Der Reichspräsident*, *Die Neue Rundschau*, 36 Jahrgang, Heft. 4, 1925.

Wandersleb, Der Präsident in Nordamerika, Frankreich und im Deutschen Reich (1922).

A number of books, dissertations, articles and brochures deal with particular phases of the presidency. Among these may be mentioned:

Fritz Abraham, Die politische Machtstellung des Reichspräsidenten (Dissertation, 1925).

Bell, Das verfassungsrechtliche Verhältnis des Reichspräsidenten zu Reichskanzler, Reichsregierung und Reichstag. Deutsche Juristen Zeitung, 1925, p. 837.

Richard Grau, Die Diktaturgewalt des Reichspräsidenten und der Landesregierungen auf Grund des Art. 48 der Reichsverfassung (1922).

— Wie ist das in Art. 48 Abs. 5 der Reichsverfassung Vorgehene Reichsgesetz über den Ausnahmezustand zu Gestalten? in Juristische Wochenschrift, 1924, Ausgabe B, p. 1810 ff.

Hantzschel, Die Verfassungsschränken der Diktaturgewalt des Artikels 48 der Reichsverfassung. In Zeitschrift für Öffentliches Recht, Bd. V, Heft 1.

Henle, Das Notverordnungsrecht des Reichspräsident und der Landesregierung nach Art. 48 der R. V., in Zeitschrift für Rechtspflege in Bayern, Nos. 23 and 24, 1921.

Heymann, Reichsexekution und Ausnahmezustand (Dissertation, 1923).

Jacobi, Die Diktatur des Reichspräsident. Veröffentlichungen der Vereinigung Deutscher Staatsrechtslehrer, Heft. 1 (1923).

Katz, Die Stellung des Deutschen Reichspräsidenten (Dissertation, 1920).

Koellreuter, Die Stellung des Deutschen Reichspräsidenten, in Deutsche Juristen Zeitung, 1925, Heft 7, p. 551.

Lobe, Der Untergang des Rechtsstaats, Deutsche Juristen Zeitung, 1925, Heft 1, p. 153 ff.

Hans B. Moosmann, Die Reichsexekution nach der Weimarer Verfassung (1925).

Müller, Die Berechtigung zur Verhängung des Belagerungszustandes einst und jetzt (1920).

Schmitt-Dorotic, Die Diktatur von den Anfängen des Modernen Souveränitätsgedankens bis zum Proletarischen Klassenkampf (1921).

Schmitt, Die Diktatur des Reichspräsidenten. Veröffentlichung der Vereinigung deutscher Staatsrechtslehre. Heft. 1 (1924).

Scholz, Die Politische Gefahr, Verwaltungsarchiv, Bd. 27.

Thoma, Die Regelung der Diktaturgewalt, Deutsche Juristen Zeitung, 1924, Heft 17-18, p. 654.

Wenzel, Juristische Grundprobleme, I (1920).

Wittmayer, Reichsverfassung und Politik (1923).

Würmling, Die Rechtlichen Beziehung zwischen dem Reichspräsidenten und der Reichsregierung, Archiv des Oeffentlichen Rechts, Bd. XI, Heft. 3.

*Revenue and Property Administration.* The foundation for the tax administration of Germany is the Reichsabgabenordnung of December 13, 1919, as found in RGBl. p. 1993. See Bericht d. 11 Ausschusses über d. Entwürfe (1919) for the discussion of the law before committee. See volumes of RGBl. to date, for amendments. Several very good commentaries exist in regard to this law. Among them should be mentioned:

Carl Becker, Reichsabgabenordnung, issued by the Reich Finanzministerium.

Contains the text, annotations, and legal decisions.

E. Becker, Reichsabgabenordnung (5 ed., 1926).

W. Beuck, Reichsabgabenordnung (1920).

Bewertungsgrundsätze und Bewertungsbeispielen für das gewerbliche Betriebsvermögen u. s. w. (1926).

Alfons Mrozek, Hans Arlt, William Boethke, Hermann Pünder, Kommentar zur Reichsabgabenordnung (3 ed., 1924).

Fritz Rüde, Wilhelm Mühe, and Gustav Hauser, Reichsabgabenordnung (2 ed., 1922).

Rolf Schmoeger and Otto Zschucke, Reichsabgabenordnung (1924).

Contains introduction, annotations, and all executory provisions.

Albert Nieberl, Reichsabgabenordnung.

Contains the introductory ordinance of December 18, 1919, and the transitional ordinance of October 11, 1921, in Gutten-tagsche Sammlung Deutscher Reichsgesetzen (1922).

Richard Kloss, Rechtsprechung und Schrifttum in Reichssteuersachen (1925).

A good many books or articles deal with special features of the national tax code. A rather complete list of these up to October 1, 1926, is found in Reichsabgabenordnung, 40 Spruchsammlung der Deutschen Juristen Zeitung. Among these should be mentioned:

Gierse, Steuerliche Zweckmässige Gründungsformen, in Deutsche Steuerzeitung, 1923, p. 195.

Hensel, Steuerumgehung (1923).

Rosendorff, Steuerersparung, Steuerumgehung, Steuerhinterziehung (1920).

The following books or articles deal with the tax authorities :

- Conrad, Das Steuergeheimnis nach der Abgabenordnung, Steuerarchiv, 1922, p. 49.  
Finger, Steuerpflicht und Schweigepflicht, Zeitgemässe Steuer- und Finanzfragen, 1920, p. 49.  
Rosendorff, Das Steuergeheimnis, Deutsche Juristen Zeitung, 1923, p. 138.  
Wassertrüding, Die Beziehung von Steuerakten im Zivilprozesse, Deutsches Steuerblatt 4, p. 149.  
Kloss, Erfolgreiche Rechtsmittel gegen Entscheidungen, die auf richtiger Anwendung des geltenden Rechts beruhen, Neue Steuerrundschau, 1920, p. 313.  
Mrozek, Aufsichtsbeschwerde, befristete Beschwerde und Rechtsbeschwerde, Deutsches Steuerblatt 3, p. 102.  
Koch, Die Finanzgerichte, Steuer und Wirtschaft, 1922, p. 659.  
Popitz, Die Einrichtung der Finanzgerichte, Deutsche Juristen Zeitung, 1922, p. 276.  
Berlak, Die Zuständigkeit des Reichsfinanzhofs auf Grund des Sec. 43 Abgabenordnung, mit einer Bemerkung von Enno Becker, Steuer und Wirtschaft, 1922, p. 685.

Several books or articles deal with the problem of establishing tax values :

- Becker, Der Begriff der Wirtschaftlichen Einheit, Steuer und Wirtschaft, 1926, p. 1.  
Heine, Die Bewertung der Wirtschaftlichen Einheit nach der AO, Deutsches Steuerzeitung, 1923, p. 158.  
Kohlenberger, Der Gesamtwert bei der Einheitswertsteuer und nach der AO., Deutsches Steuerblatt, 1926, p. 60.  
Mirre, Zum Wesen der Wertermittlung, Steuer und Wirtschaft, 1923, p. 337.  
Oskar Mugel, Kommentare zum Aufwertungsrecht ; Vol. I, Kommentar zum Aufwertungsgesetze (1926). Vol. II, Ergänzungen zum Kommentar zum Aufwertungsgesetze (1926).  
Beuck, Zusammenhang der Bewertungsvorschriften der Neuen Vermögenssteuer und der AO., Deutsche Steuerzeitung, 1924, p. 255.  
Delbrück, Der Begriff des gemeinen Wertes, Allgemeine Steuerrundschau, 1921, 276.  
Haussmann, Der "gemeine Wert" des industriellen Anlagekapitals, Mitteilungen der Steuerauskunftsstelle des Reichsverbandes der Deutschen Industrie, 1921, p. 207.  
Fürnrohr, Der Reichsfinanzhof zur Frage der Grundstücksbewertung, Steuer und Wirtschaft, 1923, p. 107.  
By same author, in Deutsche Steuerzeitung, 11, p. 740.

Bahmann, Gemeiner Wert oder Ertragswert, Allgemeine Steuer-rundschau, 1922, p. 817.

Several articles deal with the assistance to tax authorities given by other authorities and professional associations :

Garrels, Steuerhilfe von Berufsverbänden und Behörden, Mitteil-ungen der Steuerauskunftsstelle des Reichsverbandes der Deutschen Industrie, 1926, p. 208.

Stamm, Beistands- und Auskunftspflicht der Reichsbahn auf steuerlichem Gebiete, Mitteilungen der Steuerauskunftsstelle des Reichsverbandes der Deutschen Industrie, 1926, p. 153.

Volk, Zur Rechtshilfe in Zoll- und Steuerstrafsachen, Zeitschrift für Zollwesen und Verbrauchssteuern, 1920, 1, 33, 49, 81.

The chief books and articles in respect to the legal remedies in tax matters are :

Friedrichs, Rechtsmittel in Reichsabgabensachen, Neue Steuer-rundschau, 1920, p. 149.

Gnad, Rechtsbeihilfe in Steuersachen nach den Vorschriften der AO. (1922).

Kloss, Kompetenzkonflikt zwischen Steuergerichten und Finanz-behörden, Deutsches Steuerblatt, 1924, p. 27.

— Inhalt der Rechtsmittelentscheidung nach der AO., Neue Steuerrundschau, 1920, p. 174.

Ahlborn, Der Steuerbescheid und die ihm Gleichgestellten Bescheide im Lichte der obersten Rechtsprechung, Zeitschrift für Zollwesen und Verbrauchssteuern, 1924, p. 138.

Buchwald, Der ordentliche Rechtsweg in den Reichssteuergesetzen, Juristische Wochenschrift, 1921, p. 69.

Kaufmann, Die ordentlichen Gerichte in der AO., Recht, 1920, p. 82.

Marcus, Form und Inhalt der Rechtsmitteleinlegung in Steuer-sachen, Deutsche Steuerzeitung, 1922, p. 869.

Ball-Dresel, Reichssteuer Gesetze und Verordnungen (1924).

Mirre, Sachliche Entscheidung bei Zweifelhäftigkeit der Rechts-zeitigkeit eines Rechtsmittels, Allgemeine Steuerrundschau, 1923, p. 124.

Uhlrich, Rechtsmittel gegen die Verwerfung eines Rechtsmittels durch den Vorsitzenden. Deutsches Steuerblatt, 1925, p. 613.

Hartung, Die Aufgaben des Finanzamt im Berufungsverfahren, Deutsche Steuerzeitung 11, p. 1038.

Mend, Die Officialberufung der AO. Allgemeine Steuerrund-schau, 1922, p. 734.

- Kloss, Der Tatbestand in Entscheidungen zweiter Instanz, Steuerarchiv, 1926, p. 73.  
 Stattien, Reichssteuerstrafrecht und Reichssteuerverfahren, 1925.  
 Yblagger, Tatsächliche Feststellungen und Rechtsbeschwerde, Deutsche Steuerzeitung, 1924, p. 152.  
 Reinsch, Die Rechtsprechung der Landesfinanzämter, Finanzgerichte, sowie des ordentlichen Gerichte in Steuersachen (1923).  
 — Die Beschwerde in Reichssteuersachen, Zeitschrift für Zollwesen und Verbrauchssteuern, 1921, p. 264.  
 Schmauser, Der Reichsfinanzhof als Beschlussbehörde, Steuer und Wirtschaft, 1922, p. 562.

A few books on the tax law in Germany should be mentioned here:

- Karl Friedrichs, Grundzüge des Steuerrechts im Reich und in Preussen (1925).  
 Paul Marcuse, Das neue Rechtssteuerrecht (1924).  
 Georg Strutz, Handbuch des Reichssteuerrechts (1927).  
 Albert Hensel, Rechtsfälle aus dem Steuerrecht (1924).  
 — Steuerrecht (2 ed., 1927).

Few subjects have excited greater interest in Germany for the last few years than the problem of tax distribution among the Reich, the states, and the local units. The following books and articles on this subject are valuable:

- Albert Hensel, Der Finanzausgleich im Bundesstaat in seiner staatsrechtlichen Bedeutung (1922).  
 F. W. Koch, Finanzausgleichsgesetz (1927).  
 Wilh. Markull, Finanzausgleich und Geldentwertungsausgleich zugunsten der Länder, u. s. w.  
 — Das Gesetz zur übergangsregelung des Finanzausgleich, u. s. w., D. Jur. Zeitung, 1927, p. 574.  
 — Kommentar zum Gesetz über den Finanzausgleich zwischen Reich, Ländern und Gemeinden . . . in der Fassung vom 23 VI, 1923 (1923).  
 Popitz, Finanzausgleichsprobleme, 1927.

*Taxation.* There are a number of periodicals in Germany devoted to the subject of taxation. They are very valuable for articles dealing with detailed problems in tax administration.

- Allgemeine Steuerrundschau. Vol. I, 1917-date.  
 Deutsches Steuerblatt. Vol. I, 1917-date.  
 Steuerzeitung des Landesverbandes Bayern. Vol. I, 1919-date.

Steuerschutz. Vol. 1, 1925-date.

Mitteilungen der Steuerauskunftsstelle des Reichsverbandes der Deutschen Industrie. Vol. 1, 1917-date.

Neue Steuerrundschau. Vol. 1, 1919-date.

Reichssteuerblatt. Issued by National Finance Ministry. Vol. 1, 1910-date.

Steuerarchiv. Vol. 1, 1897-date.

Steuer und Bilanz-Revue. Vol. 1, 1921-date.

Zeitschrift für Zollwesen und Verbrauchssteuern. Vol. 1, 1920-date.

*The Budget, the Treasury, Accounting.*

Paul Buchholtz, Grundriss des Haushalts-Kassen- und Rechnungswesens in Reich, Länder und Gemeinde (1922).

Wilhelm Prinz and W. Ertingshausen, Haushalts-Kassen- und Rechnungswesen der Reichsfinanzverwaltung (3 ed., 1923).

Fritz Reinhardt, Das Haushaltswesen im Reich, Länder und Gemeinde (1922).

Johann Thomsen, Vereinheitlichung der Haushaltspläne, 1922.

The best commentary on the budget law is that of R. Schulze and E. Wagner (1924), Reichshaushaltsordnung vom 31 Dezember 1922.

The budgets and supplemental budgets should be consulted, also the reports of the budget committees of the Reichstag and the Reichsrat. The Überblick über den Entwurf des Reichshaushaltsplans for various fiscal years, prepared by the Reichsminister der Finanz, is also valuable. These may be found in the Drucksachen of the Reichstag. A good example of the work done by the budget committee may be found in Bericht des 5 Ausschuss (Reichshaushalt) über die finanz- und wirtschaftspolitische Lage. See Reichstag III, 1924-1927, Drucksachen No. 3764.

*State Government and Administration.* The material regarding the state constitutions, the relationship of the state to the Reich, and the supervision of the Reich over the state, will be found in this bibliography under the headings "State Constitutions," and "The National Constitution," etc.

Several books deal with both the Reich and the states or with the Reich and a particular state:

Konrad Bornhak, Grundriss des Verwaltungsrechts in Preussen und dem Deutschen Reiche (1925).

W. Boyens, Verfassung und Verwaltung des Deutschen Reichs und des Preussischen Staats (7 ed., 1924).



Hans Cuno, *Verwaltungsrecht und Verwaltungspraxis* (1924).

Various volumes of this work deal with Prussian state government and administration.

Carl Dieckmann, *Verwaltungsrecht* (1923).

Gives a rather complete picture of the actual functions that Prussia is carrying on.

Julius Hatscheck, *Lehrbuch des Deutschen und Preussischen Verwaltungsrechts* (3 and 4 ed., 1924).

— *Auserpreussisches Landesstaatsrecht* (1926).

This is one of best books on state government and administration in Germany.

Wilhelm Lympius, *Die Verfassung und Verwaltung in Preussen und im Deutschen Reich* (1925).

This is valuable for the citations to laws, ordinances and court decisions. Is little more than a summary, however.

— *Die neue Verfassung und Verwaltung im Reich und in Preussen* (1921).

A short presentation of the legislation from 1914 to 1921.

Otto Meissner, *Grundriss der Verfassung und Verwaltung des Reichs und Preussens, nebst Verzeichnis d. Behörden und ihres Aufgabenkreises* (1922).

— *Das Staatsrecht des Reichs und seiner Länder* (2 ed., 1923).

This is very readable, but not completely documented.

Stier-Somlo, F. *Deutsches Reichs- und Landesstaatsrecht* (1924).

This is valuable for the constitutional law of the states.

— *Sammlung in der Praxis oft angewandter Verfassungs- und Verwaltungsgesetze und Verwaltungsverordnungen des Deutschen Reichs, mit Preussischen Ausführungsgesetzen und Verordnungen* (3 ed., 1923).

Is valuable in this connection particularly for the Prussian laws and ordinances carrying out the national laws.

Karl Buchert, *Sammlung in der Praxis oft angewandter Verwaltungsgesetze und Verordnungen für Bayern* (4 ed., 1924, 1925).

Robert Piloty and Franz Schneider, *Grundriss des Verwaltungsrechts in Bayern und dem Deutschen Reiche* (2 ed., 1922).

*Bayerische Gemeinde- und Verwaltungszeitung*. 34 year (1924).

*Bayerische Verwaltungsblätter, Blätter für administrative Praxis*, 73 year (1925).

Reuss, *Thüringisches Verwaltungsrecht* (1927).

Max von Brauchitsch, *Die Preussischen Verwaltungsgesetze*, revised by Drews and Lassar, Bd. 1 and 2 (1925).

This is valuable, as it includes the most important laws on internal administration in Prussia, with commentaries.

Hans Cuno, *Verwaltungsrecht und Verwaltungspraxis*.

Heft 3. Preussen: I, Vom Staatsministerium bis zu Selbstverwaltung (1925).

- Heft 4. Selbstverwaltung in Stadt, Land, Kreis und Provinz (1925).
- Heft 5. Finanzen in Preussen: I, Einleitung: Finanzwissenschaft und Finanzrecht, Staatshaushalt (1926).
- Alexander Dominicus, Die Reform der Preussischen Staatsverwaltung (1924).
- Karl Friedrichs, Die Gesetzgebung über die Allgemeine Landverwaltung und über die Zuständigkeit der Verwaltungs- und Verwaltungsgerichtsbehörden (2 ed., 1921).
- Karl Hoffmann, Sozialdemokratische Verwaltungsreform in Preussen (1921).
- Verwaltungsvorschriften und Gesetze für Preussische Gemeinde, Polizei und Kreisbehörden. Collected by Maraun.
- Ministerial-Blatt für die Preussische Innereverwaltung. Issued by the Prussian Ministry of the Interior.
- Preussisches Verwaltungs-Blatt. Published by Prussian Municipal League (Städtetag).
- Preussische Verwaltungs- und Finanz-Zeitung.
- Ministerial-Blatt für die Sächsische Innereverwaltung. Issued by the state Ministry of the Interior.
- Sächsische Verwaltungs- und Steuer-Zeitung, 1921-date.
- Walter Friedensburg, Hundert Jahre Preussischer Verwaltung in Thüringen (1920).
- Ludwig v. Kohler, Über den Einfluss der Revolution auf der Selbstverwaltung in Württemberg; Reden bei der Rektoratsübergabe am 30 IV, 1925.

*Local and Municipal Government.* The organic laws for local governments are found in the section of this bibliography dealing with fundamental laws. They give the legal basis for local government.

Several private texts and commentaries on these laws should be mentioned:

- Willy Berthold, Die Neuordnung d. Sächs. Gemeindewesen nach d. Gemeindeordnung f. d. Freistaat Sachsen u. d. Gemeindewahlordnung vom 1, VIII, 1923.
- Badische Gemeindeordnung, vom 5, X, 1921, nebst ihren gesetzl. Erg. u. unt. Beifügung d. wichtigsten Vollzugsbestimmungen hierzu. Erl. v. Erwin Gündert (3 ed., 1924).
- Gemeindeordnung f. d. Freistaat Sachsen vom 1, VII, 1923, in der Fassung des Gesetz vom 15, VI, 1925. (1925). This contains an introduction and remarks.
- Hessische Kommunale Gesetzgebung; equals Sammlung aml. Handausgaben, No. 76.

- Hans Helfritz, *Grundriss d. Preussische Kommunalrechts* (2 ed., 1927). This is one of the best short treatises on Prussian municipal law.
- G. Montagu Harris, *Local Government in Many Lands* (1926). Gives a brief picture of local government in several German states.
- P. Kiess, *Handbuch d. Kommunalen Rechts d. Gemeinde, Stadt- und Landkreise Thüringens* (1922).
- Landgemeinde-Ordnung, Die (Gesetz, die Landgemeindeordnung betreffend) für den Volksstaat Hessen vom 8, VII, 1911, in d. Fassung d. Gesetzes vom 15, IV, 1919, [u. s. w.], bis zum 1, I, 1925 erfolgten Abänderungen, u. s. w. Prepared by Friedrich Koehler (2 ed., 1925).
- Erich Merkel, *Die neue Sächs. Gemeindeordnung vom 1, VIII, 1923, in gemeinfassl. Darstellung* (1924).
- Alfons Riess, *Kommunale Wirtschaftspflege* (1924).
- Fritz Stier-Somlo, *Die Wandlungen des Preussischen Städte-Landgemeinde-Kreis- und Provinzialrechts in den Jahren 1918-1921* (1922). This is the best description of the changes through the years 1918-1921.

A vast periodical literature has developed within the field of local government and administration. These periodicals, which are usually the organs of local associations, are listed in the *Handwörterbuch der Kommunalwissenschaft*, Vol. 3, p. 290 ff. The more important of those relating to municipal affairs are:

- Mitteilungen des Deutschen Städtetags*, established 1907, appearing twice a month, the organ of the Deutscher Städtetag.
- Zeitschrift des Reichsarbeitgeberverbandes Deutscher Gemeinden und Kommunalverbände*, e. V., established in 1921, twice a month, is organ of the Reichsarbeitgeberverband, Deutscher Gemeinden und Kommunalverbände, sowie sämtlicher angeschlossener Kommunalverwaltungen.
- Preussische Gemeindezeitung*, established 1908, issued each ten days by the Preussischer Landgemeindevorstand West, is for the discussion of municipal scientific and economic problems, especially governmental practice, information regarding legislation, jurisprudence, and administration.
- Kommunale Rundschau*, established 1910, is issued weekly by the Reichsstädtebund. Is for the information of city administrations in regard to all present day questions regarding municipal affairs, official publications, proposals of the Reichsstädtebund, etc.
- Zeitschrift für Selbstverwaltung*, established in 1918, issued twice a month by the Verband der Preussischen Landkreise und the Verband Deutscher Landkreise. This county publication has for

its purpose the furthering and development of local self-government, and the discussion of all local questions, especially questions of local self-government.

Die Landgemeinde, established in 1892, issued every two weeks by Preussischer Landgemeinde-Verband, to publish official information of the association, and other matters of interest to rural communes.

Mitteilung des Sächsischen Gemeindetags, established in 1921, issued monthly by the Sächsischer Gemeindetag und Arbeitgeberverband sächsischer Gemeinden, for the purpose of informing its members as to all affairs which concern them.

Der Deutsche Landgemeindetag, established in 1921, issued twice a month, by the Landgemeindetag, for the purpose of reviewing all matters of local self-government.

Der Bayerische Bürgermeister, established 1912, issued three times a month, by several local associations, for the purpose of representing the general interests of the communes and districts.

Periodicals which include the whole field of communal politics are:

Deutsche Gemeindezeitung, established 1862, issued weekly by the Vereinigte Provinzen Preussens, for dealing with all phases of local self-government. Its supplement is the "Archiv für Verwaltungsrecht," a collection of the most important parliamentary discussions, legislative material, local statutes, police decisions, etc.

Zeitschrift für Kommunalwirtschaft und Kommunalpolitik, established 1911, issued twice a month by the Verein für Kommunalwirtschaft und Kommunalpolitik sowie eine Reihe von Städtetagen und Gemeindeverbänden.

Der Bürgermeister, established 1911, issued semi-monthly by the Deutscher Bürgermeisterbund: Verband der Bürgermeister und Amtmänner in Rheinland und Westfalen, for the handling of all municipal questions, especially regarding the position and legal relationships of municipal authorities.

Kommunale Praxis, established 1900, issued weekly by the Sozialdemokratische Partei Deutschlands, to furnish current information of municipal practice and municipal theory.

Kommunalpolitische Blätter, established 1910, issued every two weeks by the Kommunalpolitische Vereinigung der Deutschen Zentrumspartei.

Die Sozialistische Gemeinde, established 1919, issued semi-monthly by the Unabhängige Sozialdemokratische Partei Deutschlands, for the education of the party members who are professional and lay officers of the communes, and for the presentation of the party interests.

- Deutschnationale Gemeindepolitik, established 1920, issued monthly by the Bund Deutschnationaler Gemeindevertreter. "Wegweiser für Städtverordnete, Kreis- und Gemeindevertreter."
- Monatshefte Deutscher Städte, established 1921, issued monthly by the Verband der Deutschen Städtestatistiker. Contains statistical reports concerning German cities.
- Die Deutsche Stadt, established 1920, issued monthly by the Deutsche Gesellschaft für Kommunalwesen, e. V.
- Preussisches Verwaltungsblatt, established 1880, issued weekly, contains current information regarding public law, administrative legislation and the administration of justice. Contains many theoretical and practical discussions.
- Bayerische Gemeinde- und Verwaltungszeitung, established 1891, issued every ten days, for discussion of all matters of interest to the local self-governing bodies and the state administration.
- Zeitschrift für Staats- und Gemeindeverwaltung, Hessische Gemeindezeitung, established 1875, issued monthly as a double number, is largely concerned with the public law in Hesse, contains decisions of courts, etc.
- Württembergische Zeitschrift für Verwaltung und Rechtspflege, established 1907, issued monthly, presents the laws and their practical application, information as to the decisions of the national and state administrative courts, the finance and ordinary courts etc.

There are more than two dozen publications dealing with special features of municipal administration, such as savings banks, schools, hospitals, public welfare, the building system, public health, gas and water works, etc. A list of these, with the year when they were established, their particular functions, etc., is found in Handwörterbuch der Kommunalwissenschaften, Vol. 3, p. 296 ff.

Five publications dealing with municipal officers should be mentioned:

- Sächsische Gemeindebeamtenzeitung, established 1875, issued semi-monthly by the Sächsischer Gemeindebeamtenbund.
- Rundschau für Kommunalbeamte, established 1895, issued weekly by the Verband der Kommunalbeamten und Angestellten Preussens.
- Bayerische Gemeindebeamtenzeitung, established 1907, issued every ten days by the Zentralverband der Gemeindebeamten Bayerns.
- B. H. K.: Mitteilungen des Berufsvereins der höheren Kommunalbeamten Deutschlands.
- Der Badische Gemeindebeamte, established 1921, issued every fourteen days by the Zentralverband der Gemeindebeamten Badens.

There are a number of books and publications that deal with municipal administration in the different states. The most numerous, of course, are those dealing with Prussia. Among these should be mentioned:

Schriften des Badischen Kommunal-Verlags published by the Badischer Kommunalverlag.

Die Gemeinde, Zeitschrift d. Verwaltungs- und Rechnungswesen d. Badischen Gemeinden, Sparkassen und Stiftungen sowie d. sozialen Versicherung, 16 year 1928.

Waldemar Grumbkow, Die Geschichte der Kommunalaufsicht in Preussen (1921).

Handbuch des kommunalen Verfassungs- und Verwaltungsrechts in Preussen, under direction of F. Stier-Somlo.

See also: Most, Die Deutsche Stadt und ihre Verwaltung (1913, a series of small handbooks). Schmid, Verfassung und Verwaltung der Deutschen Städte (1914).

*Public Officers.* Beside the constitutional provisions and laws governing officers, several official documents are of importance. The Entwurf eines Besoldungsgesetz, Drucksachen des Reichstags III, Wahlperiode 1924-1927, No. 3656, beside containing the draft of a new salary law submitted by the National Minister of Finance, contains a very interesting statement (page 181) of the German theory of the public officer. The Bericht des 5. Ausschusses (Reichshaushalt) über die Finanz- und Wirtschaftspolitische Lage, Drucksachen des Reichstags, III Wahlperiode 1924-1927, No. 3764, 261, 262, and 263, contains committee debates on the salary law. The Beilagen zum Überblick über den Entwurf des Reichshaushaltsplans für das Rechnungsjahr 1927, contains a chart showing the number and the proportion of the officers, employees, workers, soldiers, etc. (Chart 8). The Bericht des 14 Ausschusses (Beamtenangelegenheiten) über den Entwurf einer Reichsdienststrafordnung, contains valuable information regarding the proposed disciplinary law. It is found in Drucksachen des Reichstags, III Wahlperiode, 1924-1927, No. 3630.

In addition to the publications for local officers listed under local and municipal government, several other publications for government officers have been established, as follows:

Deutsches Beamten Archiv. Vol. I, 1919-date.

Der Beamtenbund. Vol. I, 1916.

Beamten-Jahrbuch. Vol. I, 1915.

- Beamten-Monatshilfe. Vol. I, 1925.  
Allgemeine Beamten-Zeitung. Vol. I, 1919-date.  
Behörden und Beamte. Vol. I, 1919.  
Die Gemeinschaft. Organ of the German Official Union, 1916-(?)  
Die Beamtenfrau, Zentralorgan f. d. Interessen d. Beamtenfrauen, established 1919, by Die Beamtenfrau Verl. Gesellschaft, for the guarding of the interests of women officers.  
Bibliothek für Verwaltungsbeamte, issued by Karl Voos, established in 1918, contains much information *in re* public officers.  
Nachrichten des Reichsverbandes der höheren Verwaltungsbeamten des Reichs und der Länder, issued monthly by the Reichsverband d. höhere Verwaltungsbeamten, is the chief organ of the higher administrative officers.  
Der Deutsche Verwaltungsbeamte, established in 1918 by the Gewerkschaft Deutscher Verwaltungsbeamten, should be consulted.  
Der Verwaltungsmann, established in 1901, issued monthly by the Vereins Württ. Verwaltungsbeamten e. V.  
Zeitschrift der Gewerkschaft Deutscher Verwaltungsbeamten, established in 1918, issued semi-monthly.  
Zeitschrift für Polizei- und Verwaltungsbeamte. Deutsche Verwaltungs-Zeitung, established 1894, issued quarterly.

Numerous books and articles have appeared since the Revolution, regarding public officers. Only a few can be listed here. For a more complete list, see:

- Deutsches Bücherverzeichnis, Vol. 10, 1921-1925, Register A. K.  
K. Delius, Die Stellung der Beamtenschaft im neuen Staat (1922).  
H. Haussmann, Die Büroreform als Teil der Verwaltungsreform (1925).  
Th. Klein, Die Wirtschaftslage der Beamten (1921).  
W. Schröder und Paul Lockenvitz, Der soziale Niedergang der Deutschen Beamtenschaft (1921).

For salaries and pensions of officers see:

- Deutsches Bücherverzeichnis, Vol. 10, p. 192, for a list of salary laws and commentaries on them.  
Reichsbesoldungsblatt, established in 1921, issued by the Reichsfinanzministerium.  
Preussisches Besoldungsblatt, established 1923, issued by the Preuss. Finanzministerium.  
Gast, Die Beamtenbesoldung im Reich und in den Ländern (1922).  
Knappmeyer, Beamten-Pensionsgesetze für Reich und Preussen (1921).

On the education of public officers see:

Werner F. Bruck, *Die Deutsche Beamtenbewegung und die Beamtenhochschulbildung*.

Several books deal with the national law of officers or with state laws affecting officers. Among them should be mentioned:

Arndt, *Das Reichsbeamtengesetz* (A commentary of 1908).

Appelius, *Neues aus dem Beamtenrecht insbesondere für Preussen und für Kommunalbeamten* (1921).

Hans Assmann, *Wohlerworbene Beamtenrechte und das Besoldungsrecht der Preussischen Kommunalbeamten* (2 ed., 1924).

Beamtenrechts- und Besoldungsbestimmungen, *Die neuesten, sowie Rechtsentscheidungen*. Issued as a supplement to *Deutschen Beamten Taschenbuch* (1924-25).

Jacob Beyhl, *Der Reichsgesetzentwurf über Beamtenvertretung u. d. Volksschullehrer* (1921).

H. Conrad, *Verfassungsrecht, allgemeine Finanzverwaltung, Beamtenrecht* (4 ed., 1925).

Waldemar Eckart, *Das Deutsche Beamtengesetz* (1922).

B. Knappmeyer, *Die Rechtsverhältnisse der Reichsbeamten* (1921).

Merkel, *Der Gemeindebeamte* (7 ed., 1925).

Heinz Potthoff, *Grundfragen des Künftigen Beamtenrechts* (1923).

Schulze-Roth, *Das Sächsische Beamtenrecht* (1925).

Friedrich Wolfstiegl, *Das Beamtenreichsrecht nach Inkrafttreten der Reichsverfassung vom 11, VIII, 1919* (1921).

*Police Functions*. Several publications are devoted exclusively to police affairs. Among them should be mentioned:

*Die Polizei*, established 1903, semi-monthly.

*Der Oberwachtmeister*, established 1914, issued semi-monthly by *Verband der Polizei und Kriminal-Oberwachtmeister Deutschlands*.

*Deutsches Polizei-Archiv*, established 1921, issued semi-monthly.

*Der Polizei-Beamte*. The organ of the *Verband der Polizeibeamten of Baden*.

*Polizeibeamten-Blatt*, established 1917.

*Preussische Schutzmanns-Zeitung*, established 1913.

Among the works dealing with the functions of the police and their general position should be mentioned:



- Wilhelm Abegg, Aufgaben und Aufbau der Polizei (1925).  
Ludwig Bartels, Polizeilehrbuch (1923).  
Wilhelm Cuno. 100 Polizei Aufgaben und deren Lösung (1921).  
Friedrich Retzlaff, Der Polizeibeamte (1925).  
— Polizei-Handbuch (1925).

*The Judicial System.* The literature on the general subject of court organization, jurisdiction, procedure, and the like, is so extensive and so technical that no attempt will be made to deal with it here. The references in Chapter XIII of this book, and under special topics (such as Court Decisions) in the present bibliography, will serve as an introduction to this vast field. The best legal periodicals have been listed above. New books and standard works covering every aspect of the administration of justice are advertised and reviewed in these periodicals.

Several recent books deal with the law governing the organization of the ordinary courts:

- Auerswald, Die Neuordnung der Gerichtsverfassung und Strafrechtspflege nach der Verordnung vom 4, I, 1924, in systematischer Darstellung (1924).  
Gerichtsverfassung mit Einführungsgesetz (10 ed. 1925).  
Hubert Graven, Grundriss zu den Vorlesungen über Gerichtsverfassung und Zivilprozess (1921).  
Lammers, Das Gesetz über den Staatsgerichtshof, 1921.

The American Law School Review of May, 1925, p. 505, contains a very valuable article on Legal Education in Germany, by O. C. Kniep.

The two chief systems of philosophy concerning the organization and jurisdiction of the administrative courts are best expressed in two books which were written shortly after the middle of the past century:

- Otto Bähr, Der Rechtsstaat (1864), represents the views of those who believe that the administrative courts should be organized practically as ordinary courts, and should have jurisdiction only over questions of law.  
Rudolf v. Gneist, Der Rechtsstaat und die Verwaltungsgerichte in Deutschland (1879), represents the opinions of those who believe that the administrative courts should be largely composed of administrators and should decide questions of expediency as well as questions of law.

The laws of the individual states regarding the administrative courts must be consulted in detail for the organization of these courts, their jurisdiction, the parties appearing before them, the legal remedies and so on.

A comprehensive study of the organization and jurisdiction of the state administrative courts according to present day law is:

Die Verwaltungsgerichtsbarkeit nach den Gesetzen der Deutschen Länder (Dissertation, 1925), by Joachim v. Elbe.

Much valuable discussion regarding the administrative court systems of the various states is found in the Drucksachen of the different state legislative bodies at the time at which these courts were being established.

Max Fleischmann's Wörterbuch des Deutschen Staats- und Verwaltungsrechts (1914, Vol. 3, p. 741 ff.), contains articles dealing with "Verwaltungsgerichtsbarkeit" in general, and also with the systems of administrative courts in the different German states. This, however, does not include some states which have adopted an administrative court system since the Revolution, and is in other respects not strictly up to date. See also:

Handwörterbuch der Rechtswissenschaft, by Fritz Stier-Somlo und Alexander Elster.

Gerhard Anschütz, Die Verwaltungsgerichtsbarkeit. In Handbuch der Politik, 2 ed., Bd. 1, 1914.

— Verwaltungsrecht. In Systematischen Rechtswissenschaft, prepared by Paul Hinneberg, p. 489 ff. (1913).

Fritz Fleiner, Institutionen des Deutschen Verwaltungsrecht (7 ed., 1922).

Bühler, Die Subjektiven Oeffentlichen Rechte und ihr Schutz in der Deutschen Verwaltungsrechtsprechung (1914).

von Bredow, Kritische Beiträge zur Verwaltungsgerichtsbarkeit in Preussen (Dissertation, 1922).

Karl Friedrichs, Verwaltungsrechtspflege (1920).

Goodnow, F. J., Comparative Administrative Law.

Julius Hatschek, Lehrbuch des Deutschen und Preussischen Verwaltungsrechts (3 and 4 ed., 1924).

Funke, Die Verwaltung im Verhältnis zur Justiz (1838).

James Goldschmidt, Verwaltungsstrafrecht (1902).

Georg Jellinek, System der Subjektiv Oeffentlichen Rechte (1905).

Otto Mayer, Deutsches Verwaltungsrecht (3 ed., 1924).

Piloty-Schneider, Grundriss des Verwaltungsrechtes in Bayern und dem Deutschen Reich (2 ed., 1922).

- Dr. O. v. Sarwey, Das Oeffentliche Recht und die Verwaltungspflege (1880).  
Dr. von Stengel, Die Verwaltungsgerichtsbarkeit und die öffentlichen Rechte, in Verwaltungsarchiv, Bd. 3, p. 177.  
Friedrich Stein, Grenzen und Beziehungen zwischen Justiz und Verwaltung (1912).  
Friedrich Tezner, Die deutschen Theorien der Verwaltungspflege, in Verwaltungsarchiv, Bd. 8, p. 220, and Bd. 9, p. 159.  
Philipp Zorn, Kritische Studien zur Verwaltungsgerichtsbarkeit, in Verwaltungsarchiv, Bd. 2, p. 74 ff.  
von Weiler, Über Justiz und Verwaltung (1826).

The study of particular administrative court systems should be divided into the study of the national administrative courts and the study of the state administrative courts.

The individual laws creating the different national administrative courts should be consulted, for organization, jurisdiction, parties, appeals, etc.

There seems to be no authoritative book dealing with the whole subject of the national administrative courts. A summary picture of these courts is given in Stengel's Wörterbuch des Deutschen Staats- und Verwaltungsrechts (1914), Vol. 3, p. 750 ff., with citations to the same work for a description of the individual courts. This list, however, is not complete. Hue de Grais, Handbuch der Verfassung und Verwaltung (23 ed., 1926) gives a brief description of the national administrative courts, p. 325.

Several articles deal with various aspects of the subject:

- Gerhard Anschütz, Liegt ein Bedürfnis eines Deutschen Reichsverwaltungsgerichts vor? Gutachten 30, Deutscher Juristentag, Band 1, p. 489 ff (1910).  
Max Fleischmann, Liegt ein Bedürfnis eines Deutschen Reichsverwaltungsgerichts vor? In Deutsche Juristen Zeitung, 1908, p. 957.  
Lucas, Notwendigkeit eines Reichsverwaltungsgerichts, Referat am 30. Deutschen Juristentag (1911), Stenographische Bericht, p. 330 ff.  
Schultzenstein, Liegt ein Bedürfnis eines Deutschen Reichsverwaltungsgerichts vor? Gutachten 29, Deutscher Juristentag, Band 2, p. 3 ff.  
Richard Thoma, Liegt ein Bedürfnis eines Deutschen Reichsverwaltungsgerichts vor? Gutachten für den 30. Deutschen Juristentag, Band 1, p. 51 ff.  
Bierhaus, Notwendigkeit eines Reichsverwaltungsgerichts. Ref. 30. Deutscher Juristentag, Stenographische Bericht, p. 309 ff.

- Former Vice President of the Prussian Oberwaltungsgericht Jesse,  
Über das Reichsverwaltungsgericht, Deutsche Juristen Zeitung,  
1926, Heft. I, p. 1.  
Unsigned articles in Deutsche Juristen Zeitung, 1925, p. 1787;  
1926, p. 223.  
Löwenthal, Der Gesetzentwurf über das Reichsverwaltungsgericht,  
Deutsche Juristen Zeitung, 1926, p. 475.

The following articles all deal with problems in the establishment of a national administrative court:

- Scholz, Preuss. Verwaltungsblatt, Bd. 41, p. 289.  
Hübner, Preuss. Verwaltungsblatt, Bd. 43, p. 339.  
Bühler, Archiv des Oeffentlichen Rechts, Bd. 43, p. 163.  
Baath, Preuss. Jahrbuch, Bd. 180, p. 237 and Preuss. Verwaltungsblatt 41, p. 49.  
Mirow, Nochmals das Reichsverwaltungsgericht, Deutsche Juristen Zeitung, 1927, p. 198.  
Braunwart, Das künftige Reichsverwaltungsgericht, Blätter f. adm. Praxis, Bd. 70, p. 65 ff.  
— Die Reform der Verwaltungsrechtspflege, *ibid.*, Bd. 71, 1 ff., 33 ff.  
Bredt, Der Vorentwurf eines Gesetzes über das Reichsverwaltungsgericht. Preuss. Verwaltungsblatt, Bd. 41, p. 201 ff.  
Brückner, Staats- und Verwaltungsrecht der Freien Hansestadt Lübeck, Bibl. d. öffentl. Rechts, Bd. 6 (1909).  
Damme, Der Vorentwurf eines Gesetzes über das Reichsverwaltungsgericht, Deutsche Juristen Zeitung, 1920, p. 182.  
Bill Drews, Grundzüge einer Verwaltungsreform (Official edition 1919).  
— Reichsverwaltungsgericht, Deutsche Juristen Zeitung, 1921, p. 86 ff.  
— Vom Ausbau der Preussischen Verwaltungsgerichtsbarkeit, Zeitschrift für die Gesamte Staatswissenschaft, Bd. 78, p. 586 ff.  
v. Dultzig, Zum Vorentwurf eines Gesetz über das Reichsverwaltungsgericht, Preuss. Verwaltungsblatt, Bd. 41, p. 253 ff.  
Friedrichs, Gesetzentwurf betr. das Reichsverwaltungsgericht, ent. im Ministeriums des Innern, Verwaltungsarchiv, Bd. 28, p. 202.  
Hartmann, Die Zuständigkeit des Reichsgerichts in verwaltungsrechtlichen Streitsachen, Deutsche Juristen Zeitung, 1908, p. 729.  
Hofacker, Vorläufiger Entwurf eines Gesetz über das Reichsverwaltungsgericht, Preussisches Verwaltungsblatt, Bd. 42, p. 505 ff.  
Hübener, Zum vorläufigen Entwurf eines Gesetzes über das Reichsverwaltungsgericht. Preussisches Verwaltungsblatt, Bd. 42, p. 339.

- Scholz, Allgemeine Besprechung der Entwurf eines Gesetz über das Reichsverwaltungsgericht, Preussisches Verwaltungsblatt, Bd. 41, p. 285 ff.
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Entscheidungen des Hessischen Verwaltungsgerichtshofes.

Entscheidungen des Hamburgischen Verwaltungsgerichts.

Jahrbücher des Sächsischen Oberverwaltungsgerichts.

Jahrbuch der Entscheidungen des Thüringischen Oberverwaltungsgerichts.

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Zeitschrift für Verwaltung und Rechtspflege in Oldenburg. Abt. 2 :

Entscheidungen des Oberverwaltungsgerichts.

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Behr, Die Rechtsprechung der Badischen Verwaltungsgerichte (1910).

Other materials which may be consulted are: Pfaff, Das Verwaltungsrecht in Kraftfahrzeugwesen (1927); and Gohdes, Die Grenze zwischen kriminellern und polizeilichem Unrecht (1923). Both of these dissertations contain good bibliographies, especially the latter.

*Educational Administration.* The national and state constitutions, particularly the national, contain many provisions regarding education. The national and state laws dealing with education must also be consulted.

The most important official publication dealing with education is the Zentralblatt für die gesamte Unterrichtsverwaltung in Preussen, published by the Ministry for Science, Art, and Education. This is the chief source for Prussian educational administration. It contains official orders, book reviews, discussions, etc. The Ministry of Churches and Schools in Württemberg, publishes the Amtsblatt des Württembergischen Ministeriums des Kirchen und Schulwesen. The Ministry for Public Education in Saxony publishes Die Sächsische Schulzeitung.

Among other educational publications may be mentioned :

Neue Bahnen, established 1889.

Deutsche Blätter für erziehenden Unterricht, established in 1873.

Heimat und Arbeit, Monatsschrift für Erziehung und Unterricht in d. Schulen d. Ostgebiete, established in 1924-25.  
Blätter für die Schulpraxis, established 1889.  
Monatsschrift für das gesamte Schulwesen, established 1925.  
Handbuch der Preussischen Unterrichtsverwaltung, established 1921.

From the vast mass of books and articles dealing with the present schools of Germany only a few can be mentioned here. A very extended bibliography will be found in Deutsches Bücherverzeichnis, 1921-1925, and in the Stich- und Schlagwortregister (published 1927). See the following subjects: Schul, Erziehung, Unterricht.

A very good summary of the school system of Germany is found in articles in Handwörterbuch der Kommunalwissenschaften, III, pp. 690 ff. There is listed at the end of these articles, much of the more important literature on the subject existing prior to the war. Interesting articles by many different authors are collected in Lampe und Franke, Staatsbürgerliche Erziehung (1924).

There are many books dealing with the various kinds of schools. Among the more important dealing with the unified school system are:

Eduard Edert, Die elastische Einheitsschule (1924).  
Victor Henry, Einheitsschule und Bildungseinheit (1923).

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Johannes Bach, Der Unterricht in der Grundschule, mit Zahlreiche Lehrplänen.  
Eckhardt, Die Grundschule. Bd. I and II (1925).  
Walter Landé, Die Grundschule in Preussen (1925).  
Herman Walsmann, in Neuedeutsche Erziehung, Heft 4. Die Methode des Grundschulleunterrichts.

In regard to the intermediate schools see:

Bestimmungen über die Mittelschulen in Preussen vom I, VI, 1925; published by Beltz (1925).  
F. Bloch, Die Mittelschulen. A handbook (1923).  
Die Mittelschule, a monthly magazine established in 1886.

In regard to the higher educational institutions see:

Denkschrift des Reichsministeriums des Innern über Massnahmen zur Umgestaltung des höheren Schulwesens (1923).



- H. Gasse, Höhere Schule und Arbeitsschulidee (1922).  
Handbuch für höhere Schulen zur Einführung in ihr Wesen und ihre Aufgaben, issued by Richard Jahnke.  
Karl Ott, Die höhere Schule (1924).  
Wychgram, Das höhere und mittlere Unterrichtswesen in Deutschland (1913).

For the German universities see:

- C. H. Becker, Vom Wesen der Deutschen Universität (1925).  
Werner Jaeger, Stellung und Aufgaben der Universität in der Gegenwart (1924).  
Friedrich Paulsen, Geschichte des gelehrten Unterrichts. This and the other works of the same author are classics in their field.

*The Administration of Economic Enterprises.* See in general the important study by Lassar, Reichseigene Verwaltung, in Jahrbuch des Oeffentlichen Rechts der Gegenwart, Band 14, 1926.

The following books should be consulted in respect to the potash industry in Germany:

- Gutachten der Sozialisierungskommission über die Organisation der Kali Industrie (1921).  
E. Jänecke, Die Entstehung der Deutschen Kalisalzlagern (2 ed., 1923).  
Verhandlungen der Sozialisierungskommission über die Kaliwirtschaft (1921).  
Vorschriften zur Durchführung des Gesetzes über die Regelung der Kaliwirtschaft; prepared by Karl Görres (1924).  
Carl Behmer, Die Entwicklung der Deutschen Kali-Industrie unter dem Einfluss der staatlichen Regulierungsversuche (Dissertation, 1925). This gives an excellent list of recent material on the potash industry.

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Verhandlungen der Eisenbahnskommission über die Organisation der Reichseisenbahnen (1922).  
W. Groener, Die Eisenbahn als Faktor der Politik (1921).  
K. Stieler, Grundfragen aus dem Gebiete des Deutschen Eisenbahnwesens (1925).  
Rob. René Kuczynski, Reichseisenbahnen und Reichsfinanzen (1922).

Hans Reschke, Die rechtliche Stellung der Reichseisenbahngesellschaft (Dissertation, 1926).

Aron, Die Deutsche Reichsbahngesellschaft im Verhältnis zum Reich und zur Reichsregierung. In Eisenbahn- und Verkehrsrechtlichen Entscheidungen und Abhandlungen (Eger), Bd. 41, Heft 3, 1925.

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Wissel, Das Dawes-Gutachten (1924).

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Paul Frentz und Gustav Tesche, Versicherungskunde für den Gebrauch in Fachschulen (1922).

Alfred Manes, Grundzüge des Versicherungswesens (4 ed., 1923).

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E. Behrend, Versorgungsrecht und Versorgungsverfahren (1926).

E. Nilson, Reichsversorgungsrecht und Fürsorgewesen (1922).

Jahrbuch für Beamte im Versorgungs- und Fürsorgewesen (1921).

Erich Merkel, Fürsorgewesen (1924).

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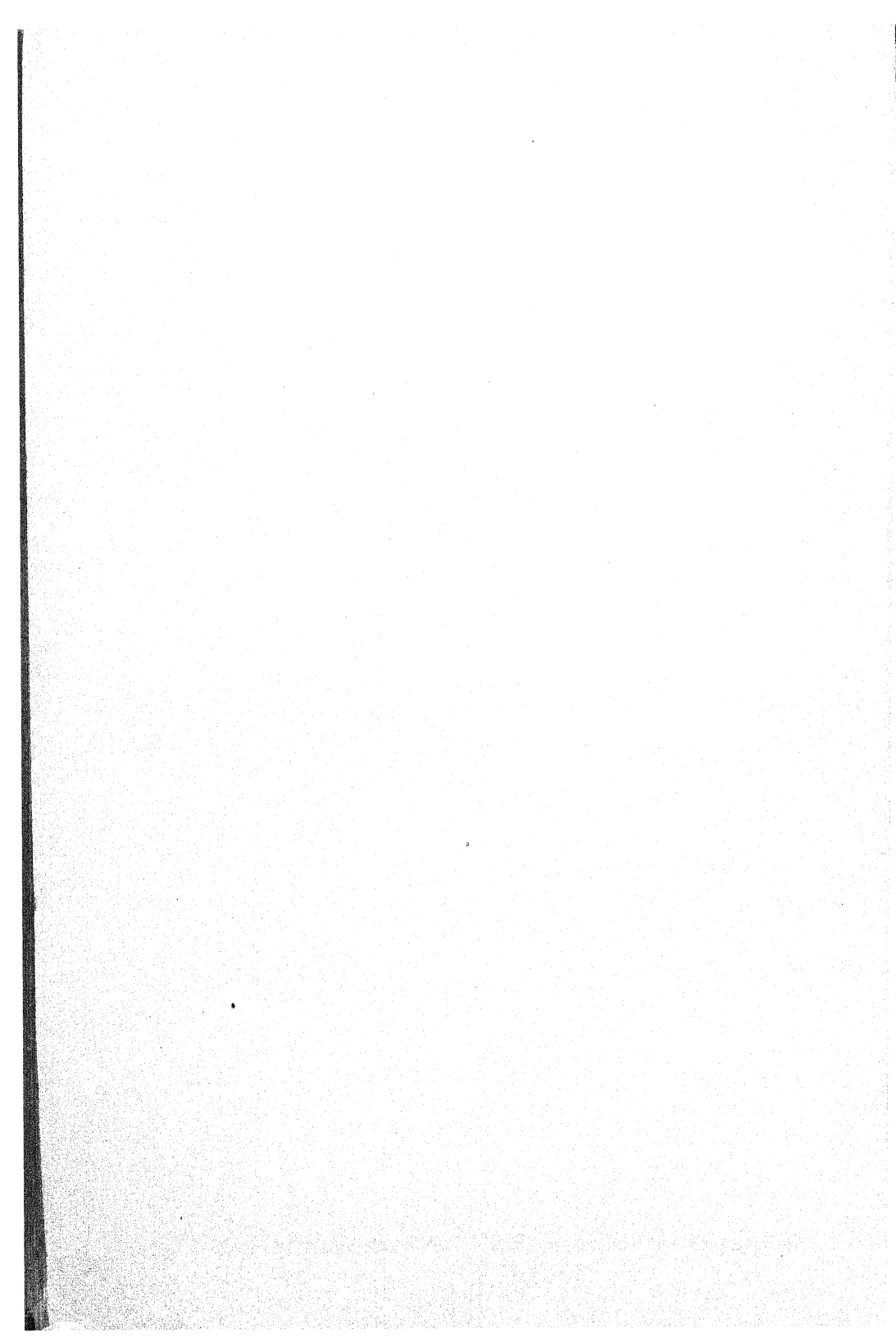
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<sup>1</sup> This index has been prepared largely from the viewpoint of those interested in problems of government and administration. The subject matter has therefore been arranged as far as possible with relation to special problems.

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